S. HRG. 99-848

THE ANTI-APARTHEID ACT OF 1986

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 2498

TO PROHIBIT LOANS TO, OTHER INVESTMENTS IN, AND CERTAIN OTHER ACTIVITIES WITH RESPECT TO, SOUTH AFRICA, AND FOR OTHER PURPOSES

JULY 15, 1986

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TUESDAY, JULY 15, 1986

U.S. SENATE, COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY,

Washington, DC.

The subcommittee met at 9:30 a.m., in room SD-538, Dirksen Senate Office Building, Senator John Heinz (chairman of the subcommittee) presiding.

Present: Senators Heinz, Gorton, Mattingly, D'Amato, Proxmire, Dixon, Riegle, Sarbanes, Cranston, and Dodd.

OPENING STATEMENT OF SENATOR HEINZ

Senator HEINZ. Ladies and gentlemen, the subcommittee will come to order.

Today the Banking Committee is holding the first Senate hearing on recent legislative proposals whose aim is to accelerate the pace of change in South Africa through reductions in United States economic relations with South Africa.

Just over a year ago this same subcommittee held hearings on the same subject. But the situation has changed since then. The South African Government has dropped a curtain of silence over South Africa to conceal the most widespread repression in that country's tragic history. The Botha government has hypocritically declared its commitment to reform, while showing instead its true commitment to violent reaffirmation of the principles of apartheid.

In my view, the United States has given the South African Government every chance to demonstrate its commitment to change, to ending the repugnant system of apartheid. The policy of constructive engagement has not produced any significant results. Now, with a new wave of brutal repression at home, and aggression and defiance abroad, we have received the South African Government's final answer to any demands for reform.

American leverage to manage change in South Africa may or may not be limited. But our interests—moral, political, strategic—are great. Each of the proposals before the Senate significantly curtails American economic relations with South Africa with the stated goal of forcing change there. As chairman of the subcommittee, I have not embraced one of these proposals as the best approach to the current crisis in South Africa. However, I have not ruled out any of them either. Whatever the decision, and it is a decision which will face all Senators, is one that should be made after careful consideration.

The best United States response to the South African crisis would follow from Presidential leadership that demonstrated the unity and seriousness of the American people on the issue of apartheid. Any sanctions, to be effective, would also need to be adopted on a multilateral basis by South Africa's other trading partners. In fashioning our own sanctions legislation, there are a few other key principles that should guide us.

First, it is imperative that the United States make it clear, through meaningful action and not just words, that we unreservedly reject the apartheid system as intolerable and repugnant, and that we also reject all efforts to prolong the existence of that system or any of its elements. Letting black South Africans and the world know where we stand is not just a moral imperative for a country that takes human liberty seriously, it is a requirement if we are to retain an important role in a South Africa that is on the brink of fundamental change.

Second, we should try to shape economic sanctions that work for change. Our leverage may be limited, but by putting pressure on those who recognize the need for change, we may contribute to the sort of rapid dismantlement of apartheid that is necessary to avoid more bloodshed. The white South African community is sharply divided. Those white South Africans in the business community who are most receptive to real change are likely to suffer if strong economic sanctions are adopted. We should give them another compelling reason to throw themselves behind the reform movement.

Third, we should avoid a purely punitive approach to sanctions that maximizes our short-term sense of satisfaction but leaves little room for us to either tighten or loosen our restrictions in response to a changing situation in South Africa. We should not shoot our bolt and thereby reduce any future influence we may have.

When the Senate acts on sanctions against apartheid, I hope we do so in a way that is clear, effective, and prudent. The issues, both for the people of South African and for the American people, demand no less from us.

At this point I'd like to turn to our ranking minority member of the subcommittee, my friend and colleague, Bill Proxmire.

OPENING STATEMENT OF SENATOR PROXMIRE

Senator PROXMIRE. Thank you, Mr. Chairman.

Mr. Chairman, this is the first of what I understand will be two hearings on S. 2498, the Anti-Apartheid Act of 1986. Senators Kennedy, Weicker, Cranston, Riegle, Sarbanes and I, along with 12 other of our colleagues, introduced that bill on May 21, 1986. An identical bill was introduced in the House by Congressman Gray at the same time. The legislation was designed to put the Congress firmly on record as opposing South Africa's racist, apartheid policy. Under that policy the political, economic, and social rights a person will enjoy his whole life are determined at birth and are based solely on the color of his skin. If you are born black in South Africa you have no voice at all in how you are to be governed. Apartheid is a wicked system. It attempts to give whites a privileged place in society by dehumanizing blacks. The system is completely contrary to the belief cherished by all Americans—that God has given man

certain inalienable rights and the state exists to help man perfect these rights—not to suppress them. Our own Declaration of Independence states that when governments act to suppress human rights, then men have a right to overthrow those governments.

In order to hang onto its privileged rule the white ruling party in South Africa increasingly relies on force. Since blacks presently have no legitimate channels to express their desires for reform, it should not surprise us that Soviet-preached violent change becomes an attractive alternative to them. The situation that is developing in South Africa shows the validity of President Kennedy's observation that, "those who make peaceful change impossible make violent change inevitable."

The question is what America can do to encourage the South African Government to institute reform that will lead all of its citizens to feel they have a stake in the Government and society of that country. I believe that we can and must use our economic and political influence to encourage change there. There are many whites in South Africa who recognize that their Government's present policy of the clenched fist is a no-win policy that will lead to increasing bloodshed and the ultimate destruction of their society. On July 10, Gavin Reilly, the head of the Anglo American Corp., South Africa's biggest company, called on his Government to speed up reforms and open talks with black leaders. He said South Africa must "confront the issue of politically motivated violence by opening up the opportunities for direct political action." There is an opposition to the governing party which is calling for a multiracial society.

In April of this year Bishop Desmond Tutu declared that he had no hope that the South African Government would change unless it was forced to do so. He called upon the international community to apply sanctions against the Government to help men of good will in South Africa establish a new, nonracial, democratic, participatory, and just society.

Last year we on this committee had 3 days of hearings on sanctions legislation. The Senate ultimately rejected the Reagan administration's constructive engagement policy and passed legislation imposing immediate sanctions on South Africa and set forth the possibility of even stronger measures being imposed in 18 months if the South African Government failed to begin a process of reform. The Reagan administration frustrated that congressional attempt by imposing limited sanctions through an Executive order that split the bipartisan group in the Senate supporting sanctions. Even then, 57 Senators voted for cloture so we could pass a sanctions bill.

Now almost a year later the administration's policy is even more discredited. Polarization in South Africa worsens. The press is censored so it cannot report on the suppression taking place. American society wants Congress to pass legislation so that white and black South Africans will know our country supports blacks in their just struggle for political rights. The House has already responded to that demand from our people. The Senate must do the same. I hope, Mr. Chairman, that when the Banking Committee completes its second hearing on S. 2498 in late July that we can move to an immediate markup on this bill. The Senate must be

given an opportunity to vote for a strong sanctions bill. I will work with my colleagues who are committed to this cause to see that this happens this year.

Thank you, Mr. Chairman. I look forward to hearing from our witnesses.

Senator HEINZ. Senator Proxmire, thank you.

Senator Mattingly.

OPENING STATEMENT OF SENATOR MATTINGLY

Senator MATTINGLY. Mr. Chairman, I think we all agree that South Africa's apartheid policy is morally indefensible and violates international law. It is in the best interest of the United States as well as the black majority of South Africa to encourage and support efforts directed toward achieving fundamental and peaceful democratic reforms.

When President Reagan proposed a series of economic sanctions against South Africa in September 1985, I supported those sanctions. Initially, I think there was some progress, but those gains have been lost. New congressional sanctions have passed the House of Representatives and various proposals have recently been offered in the Senate. The immediacy of this issue makes today's hearings particularly important. We had hoped that the limited sanctions imposed last fall would result in favorable change in that country. Yet violence and death of innocent men, women, and children continues to escalate. It is fitting then that we consider the impact that these legislative proposals are likely to have on the South African Government, and indeed, on the stability of the entire region.

I am particularly interested in the comments of the witnesses as to the effectiveness of further sanctions against South Africa in light of the apparent failure of last year's sanctions to bring about the changes that we seek.

Thank you, Mr. Chairman.

Senator HEINZ. Senator Mattingly, thank you.

Senator Cranston.

OPENING STATEMENT OF SENATOR CRANSTON

Senator CRANSTON. Thank you, Mr. Chairman.

As an original cosponsor of the Kennedy-Weicker bill, I welcome the two of you to this committee. Together, we have introduced an even stronger measure similar to the House-passed Dellums bill. We will be working with our colleagues to ensure action by various committees—the Banking Committee, the Foreign Relations Committee, and the Finance Committee.

I believe we have both the moral obligation and a strategic imperative to act on this matter. The moral obligation is because of the repugnance of the apartheid regime and the fact that the oppressed black majority has little chance to change it. The United States has limited power to do this, but we must use our freedom and use what strength we have to exercise that power as a force for progressive change.

The strategic imperative is because we want to make clear to the oppressed black majority that will inevitably come to power in

South Africa that we stand with them, not against them. As the leader of the free world we can really do no less than that. We must target pressures on those who monopolize all political power, the Pretorian obligarchy which rules with dictatorial authority.

A few decades ago our country decided you cannot do business with Hitler. Now we must decide and declare you cannot do business with apartheid.

Thus, I and others, the witnesses at the table, Senator Proxmire, and other people committed to act on this, will do all we can to pass through the Senate the strongest possible bill. This committee and other committees must act. We are committed to obtaining a vote on the strongest possible bill at the earliest possible time.

I commend our witnesses, Senators Kennedy and Weicker, for their unremitting, very effective, and unrelenting leadership on this issue. Thank you, Mr. Chairman.

Senator HEINZ. Senator Cranston, thank you.

Senator Gorton.

Senator GORTON. Thank you, Mr. Chairman. I have no opening statement.

Senator HEINZ. I want to welcome back to the subcommittee Senators Ted Kennedy and Lowell Weicker who have been in the forefront of this issue for quite some time. Before I call on our distinguished witnesses, I want to observe that there are three bills before the Senate. The first is the Kennedy-Weicker bill which we are having hearings on in this subcommittee. It's been referred to the Banking Committee. That is S. 2498.

A second bill that has received a good deal of attention is Nancy Kassebaum's bill which is S. 2636. It's been referred to the Foreign Affairs Committee and hearings will be held on South Africa and sanctions in that committee next week.

A third bill which Senator Cranston introduced with Senators Kennedy and Weicker as cosponsors, S. 2570, has been referred, just to confuse matters further, to the Senate Committee on Finance.

So we have three bills in three different committees, but this committee more than any other has jurisdiction over issues involving the Export Administration Act and economic sanctions. And so it's appropriate and fitting that this subcommittee does have the first hearing on these bills, but I suspect that we will not be alone when it comes to holding extensive hearings on this legislation.

I'd like to note, by the way, that on the witness list Senator Specter is supposed to be a part of this panel. He has been detained in Pennsylvania this morning. He will not be able to make this particular panel and he does send his regrets which he's asked me to personally convey to Senator Kennedy and Senator Weicker and the members of the committee.

Let me first ask Senator Kennedy to begin. Ted, we welcome you back.

Senator KENNEDY. Thank you very much, Mr. Chairman. I had the opportunity to be the lead witness last February, so I would be glad to yield that to Senator Weicker in the spirit of bipartisanship.

Senator HEINZ. Have we changed the name of the bill to Weicker-Kennedy yet?

Senator WEICKER. In the spirit of Senate traditions, I yield to Senator Kennedy. Age before beauty.

STATEMENT OF EDWARD M. KENNEDY, U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. I've given him his chance.

First of all, let me just say, in response to the comments of the Chair, that I for one welcome the fact that we have three different committees in the Senate focusing on this particular issue. As a result of the consideration of these various committees there will be a better informed membership to debate and discuss these issues and questions. I believe that, with the thorough hearings that occurred last February and this year, the repugnancy of the concept and the reality of apartheid will penetrate even deeper into the consciousness of the Members of this body, and that the Senate as an institution, will take action before the break in the legislative session in August.

I thank the chairman, Senators Heinz and Proxmire, who have been such leaders for such a long period of time before this issue really emerged into the kind of light that it has for their very important and significant leadership; and the work of my colleague, Senator Cranston, as well, who has been tireless in pursuing this issue; and the members of this committee for their willingness to hear Senator Weicker and myself a little over a year ago—some 15 months ago.

STRONG COMMITMENT TO FUNDAMENTAL VALUES OF DECENCY

We are back, Mr. Chairman, and I think I can say for both of us—although I know Senator Weicker speaks very effectively and well for himself—that we will be back again, time in and time out, year in and year out, until our Nation's commitment to fundamental values of decency and respect for individual liberty is reflected in a policy that expresses those values in our approach to South Africa, and that we will not be tied to a policy which violates, we believe, every basic and fundamental tenet on which this Nation stands.

So we appreciate the opportunity to be here this morning, and we would like to present some of the conclusions that compel us to urge that we move as an institution and as a country on this particular issue.

I hope the committee will act quickly to approve legislation imposing strong economic sanctions against the Government of South Africa. I support a Federal law mandating disinvestment by United States corporations doing business in South Africa, and I hope this committee will follow the lead of the House of Representatives and adopt the Cranston-Kennedy-Weicker bill, S. 2570. But you don't have to agree with us about disinvestment to accept the principle that strong economic pressure in the form of tough sanctions against the apartheid Government of South Africa is now imperative.

Mr. Chairman, Bishop Desmond Tutu pointed out only last month, "There is no guarantee that sanctions will stop apartheid, but it is the last nonviolent option left."

I deeply regret that Congress did not act last year. Last year's anti-apartheid legislation would have become law and should have become law had President Reagan not intervened with his Executive order. We cannot let another year go by.

The policy of the administration is a disgrace and an embarrassment and the Congress must act now to put the United States back on the right side of history.

The situation in South Africa over the past year has gone from very bad to much, much worse. Over 2,000 people have died since September 1985. Over 100 have been killed just in the last 30 days. South Africa is in the early stages of what could be one of the longest, bloodiest civil wars in human history. The violence and brutality of the repression that is going on inside South Africa as we meet today is unparalleled even for South Africa, and since the state of emergency was imposed on June 12 over 4,000 political leaders have been arrested and detained. The entire leadership of the Black South African Trade Union movement is in jail or in hiding at this very moment.

Just imagine what the impact would be on the United States if 4,000 of our leaders were suddenly arrested and led off to jail. This is the policy of a government that is not interested in negotiation or in reconciliation; it is the policy of a government that is only interested in maintaining power, whatever the cost in human life and suffering might be.

EPG REPORT

The experience of the Commonwealth's Eminent Persons Group [EPG], should be instructive to the members of the committee. This group was formed under the Commonwealth accord of South Africa agreed to by the heads of governments of 49 countries meeting in Nassau in 1985, and the group has issued an eloquent report about its experience in South Africa. That report should be required reading for everyone who is concerned about ending apartheid in South Africa. I urge you to attend and participate in a forum sponsored by Senator Weicker and myself next Monday in which the leaders of the EPG, the former Prime Minister Malcolm Fraser from Australia and General Obasanjo, the former Chief of State of Nigeria, will speak.

This group made a valiant and honorable effort to mediate between the South African Government and the anti-apartheid opponents. The South African Government was unyielding, recalcitrant, and devious.

According to the report of the EPG,

> We draw the conclusion that while the South African Government claims to be ready to negotiate, it is in truth not yet prepared to negotiate fundamental change, nor to countenance the creation of genuine democratic structures, nor to face the prospect of the end of white domination and white power in the foreseeable future.

In the face of such intractibility by the South African Government, it's no surprise that the EPG reached the conclusion that concerted action by all Western nations in the form of stiff economic sanctions was necessary. And in its report the EPG concluded,

> There may be no course available that can guarantee a significantly more peaceful solution, but we are convinced that the South African Government is concerned

about the adoption of effective economic sanctions against it and if it comes to the conclusion that it would always remain protected from such measures, the process of change in South Africa is unlikely to increase in momentum, and the descent into violence would be accelerated.

Mr. Chairman, I think that that conclusion from this particular panel about the importance of economic sanctions and, on the other side of the coin, the recognition that without economic sanctions that there will be a continuation and perpetuation of the violence and the denial of the basic and fundamental liberties of the individuals in that society is extremely compelling. This comes from individuals who represent a broad spectrum of political commitment and ideology.

The group said that, without sanctions:

The cost in lives may have to be counted in millions. The question, in our view, is clear. It's not whether economic sanctions will compel change. It is already the case that their absence, and Pretoria's belief that they need not be feared, defers change, and such actions may offer the last opportunity to avert what could be the worst bloodbath since the Second World War.

Increasingly, individual Americans are responding to the crisis in South Africa in ways that are consistent with our own best values and traditions. On campuses and communities across the country, citizens have been quick to march, protest, to disinvest, to express by whatever available peaceful means their concern for the victims of apartheid and their desire for our Government to take action.

But collectively, as a nation, our response has been shameful and unworthy. If there were cause to hope that persuasion might work, if there were reason to think that the apostles of apartheid might change course voluntarily, if there were evidence to suggest that our pleas for justice might be answered, our current policy of constructive engagement might suffice. But there is no sign that constructive engagement is succeeding.

To the contrary, constructive engagement has become synonymous to aid and comfort to racism in South Africa. Instead of the last best hope on Earth, the United States has become the last best friend of apartheid.

On April 2, 1986, Bishop Tutu, the most eloquent voice for human freedom in South Africa today, risked his own freedom when he suggested the direction that all true friends of a free South Africa should now take. He said:

I have no hope of real change from the South African Government, unless they are forced. We face a catastrophe in this land and only the action of the international community by applying pressure can save us. Our children are dying. Our land is burning and bleeding. And so I call upon the international community to apply punitive sanctions against this Government to help us establish a new South Africa that is nonracial, democratic, participatory, and just.

Many others have joined with Bishop Tutu. The report of the Eminent Persons Group, which I already mentioned, concluded that the economic sanctions by Western nations are necessary to forestall even greater disaster.

Last month, by declaring the current state of emergency, President Botha of South Africa delivered another blow to the policy of constructive engagement, but again the administration has looked the other way. In response to the quiet diplomacy of the Reagan

administration, Mr. Botha imposed the broadest and most ruthless state of emergency yet.

UNITED STATES DETESTED IN THE EYES OF ALL AFRICA

No matter what the South African Government does, no matter how many innocent people are killed, how many neighboring nations are invaded, how many children are tortured, how many peaceful demonstrators are arrested, how much censorship is imposed, how many journalists are expelled, how many deceptions are foisted on U.S. diplomats, the administration clings to a bankrupt policy that puts the United States on the wrong side of history and human rights in South Africa and transforms the United States into the second most detested government in the eyes of all Africa.

The leaders of the administration are unwilling to change their policy of constructive engagement and Congress must change it for them.

[The prepared statement of Senator Kennedy and a copy of the proposed bill S. 2498 follow:]

STATEMENT OF SENATOR EDWARD M. KENNEDY

I am here—with Senator Weicker—to urge the members of this committee to act quickly to approve legislation imposing strong economic sanctions against the Government of South Africa. I support a Federal law mandating disinvestment by United States corporations doing business in South Africa, and I hope that this committee will follow the lead of the House of Representatives and adopt the Cranston-Kennedy-Weicker bill (S. 2570). But you don't have to agree with us about disinvestment to accept the principle that strong economic pressure—in the form of tough sanctions against the apartheid government of South Africa (S. 2498)—is now imperative. As Bishop Desmond Tutu said last month: "There is no guarantee that sanctions will topple apartheid, but it is the last nonviolent option left."

I am grateful for the opportunity to appear before this committee, and I want to commend Senator Heinz and Senator Proxmire for their role last year in vigorously working for the anti-apartheid legislation that would have become law—that should have become law—had President Reagan not intervened with his Excutive order. I deeply regret that Congress did not act last year. We cannot let another year go by. The policy of the administration is a disgrace and an embarrassment. The Congress must act now to put the United States back on the right side of history.

The situation in South Africa over the past year has gone from very bad to much, much worse. Over 2,000 people have died since September 1984, and over 100 have been killed just in the last 30 days. South Africa is in the early stages of what could be one of the longest and bloodiest civil wars in human history.

The violence and brutality of the repression that is going on inside South Africa as we meet today is unparalleled even for South Africa. Since the state of emergency was imposed on June 12, over 3,000 political leaders have been arrested and detained. The entire leadership of the black South African trade unions are in jail or in hiding at this very moment. Just imagine what the impact would be on the United States if 3,000 of our leaders were suddenly arrested and led off to jail. This is the policy of a government that is not interested in negotiation or reconciliaton. It is the policy of a government that is only interested in maintaining power whatever the cost in human life and suffering might be.

The experience of the Commonwealth's Eminent Persons Group—the EPG—should be instructive to the members of this committee. This group was formed under the Commonwealth Accord on Southern Africa agreed to by the Heads of Government of 49 States meeting in Nassau in October 1985. The group has issued an eloquent report about its experience in South Africa, and that Report should be required reading for everyone who is concerned about ending apartheid in South Africa.

I urge you to attend and participate in a Forum sponsored by Senator Weicker and myself next Monday at which the leaders of the EPG, former Prime Minister Malcolm Fraser from Australia and General Obasanjo, the former President of Nigeria, will speak. This group made a valiant and honorable effort to mediate be-

tween the South African Government and its anti-apartheid opponents. But the South African Government was unyielding, recalcitrant and devious. According to the report of the EPG: "We draw the conclusion that while the South African Government claims to be ready to negotiate, it is in truth not yet prepared to negotiate fundamental change, nor to countenance the creation of genuine democratic structures, nor to face the prospect of the end of white domination and white power in the forseeable future."

In the face of such intractability by the South African Government, it is no surprise that the EPG reached the conclusion that concerted action by all Western nations in the form of stiff economic sanctions was necessary. In its Report, the EPG concluded:

"There may be no course available that can guarantee a significantly more peaceful solution. But against the background in which ever increasing violence will be a certainty, the question of further measures immediately springs to mind . . . We are convinced that the South African Government is concerned about the adoption of effective economic measures against it. If it comes to the conclusion that it would always remain protected from such measures, the process of change in South Africa is unlikely to increase in momentum and the descent into violence would be accelerated. In these circumstances, the cost in lives may have to be counted in millions."

Increasingly, individual Americans are responding to the crisis in South Africa in ways are consistent with our own best values and traditions. On campuses and in communities across the country, citizens have been quick to march, to protest, to disinvest, and to express by every available peaceful means their concern for the victims of apartheid and their desire for our Government to take stronger action.

But collectively, as a nation, our response has been shameful and unworthy.

If there were cause to hope that persuasion might work, if there were reason to think that the apostles of apartheid might change course voluntarily, if there were evidence to suggest that our pleas for justice might be answered, our current policy of constructive engagement might suffice. But there is no sign that constructive engagement is succeeding.

To the contrary, constructive engagement has become synonymous with aid and comfort to racism in South Africa. Instead of the last best hope of earth, the United States of American has become the last best friend of apartheid.

On April 2, 1986, Bishop Desmond Tutu, the most eloquent voice for human freedom in South Africa, risked his own freedom when he suggested the direction that all true friends of a free South Africa should now take:

"I have no hope of real change from the [South African] Government unless they are forced. We face a catastrophe in this land, and only the action of the international community, by applying pressure can save us. Our children are dying. Our land is burning and bleeding. And so I call upon the international community to apply punitive sanctions against this Government to help us establish a new South Africa that is non-racial, democratic, participatory and just."

Other eloquent voices in the international community have joined in Bishop Tutu's plea. Recently, the members of the Eminent Persons Group from the Commonwealth of Nations, after lengthy study, issued a report which concluded that economic sanctions by Western nations are necessary to forestall even greater violence inside South Africa. They said:

"It is quite clear that gentle diplomacy and quiet persuasion have failed. It is our very firm view that the South African Government will never be moved by such approaches. There is no guarantee that sanctions will work, but greatly increased international pressure involving the use of sanctions offers the only chance to avert the tragedy of which we speak involving the destruction of all Western interests in South Africa."

Despite Bishop Tutu's appeal and the recommendations of the Eminent Persons Group, the administration persists in its rejection of economic sanctions against South Africa.

Last month, by declaring the current state of emergency, President Botha of South Africa delivered another blow to the policy of constructive engagement. But again, the administration has looked the other way.

In response to the quiet diplomacy of the Reagan administration, Mr. Botha imposed the broadest and most ruthless state of emergency yet. No matter what the South African Government does—no matter how many innocent people are killed, how many neighboring countries are invaded, how many children are tortured, how many peaceful demonstrators are arrested, how much censorship is imposed, how many journalists are expelled, how many deceptions are foisted on U.S. diplomats—the administration clings to a bankrupt policy that puts the United States on the

wrong side of history and human rights in South Africa, and transforms the United States into the second most detested government in the eyes of all Africa.

If the leaders of the administration are unwilling to change their policy of constructive engagement, then Congress must change it for them.

President Botha claims that if economic sanctions are imposed against South Africa, South Africa will go it alone. But South Africa is already going it alone—straight into racial war.

The Government of South Africa has made it clear that it will not respond to the quiet overtures of diplomats from the United States or any other nation. The Botha regime has nothing but contempt for "quiet diplomacy" and "constructive engagement." It has lied to our diplomats, belittled our influence—and wrought unprecedented violence upon its own citizens. By our continued insistence on constructive engagement, we are implicated in their policy of racism and the violence of apartheid.

The opponents of economic sanctions say that sanctions will not work. But Bishop Tutu responded to this argument in his commencement address at Hunter College last May. He said then:

"But if they don't work, why oppose them so vehemently? If they don't work, why did Margaret Thatcher apply them to Argentina during the Falklands war? Why did the United States apply them to Poland and to Nicaragua? Why was President Reagan so annoyed that his European allies did not want to impose sanctions against Libya? If sanctions are so ineffective, why does the United States still maintain a blockade of Cuba? But we have all this wonderful sophistry when it comes to South Africa."

In fact, the failure of the international community to adopt economic sanctions only encourages the architects of apartheid to increase their repression. As the Eminent Persons Group pointed out, "It is not whether economic sanctions will compel change; it is already the case that their absence, and Pretoria's belief that they need not be feared, deters change."

Second, the administration argues that sanctions will be counterproductive, because they will exacerbate the pathological siege mentality of the South African Government. But as the cochairmen of the Eminent Persons Group wrote on June 12:

"We reject completely the argument that international pressure will force the South African government to withdraw into itself. This commonly held view is masterly disinformation. It has hitherto been successful in persuading major states not to take substantive measures or sanctions against South Africa. The Afrikaners have, in fact, only changed course when under extreme pressure."

Third, the administration suggests that economic sanctions will injure the very people they are intended to help, the black majority in South Africa. But that argument has been consistently rejected by black South Africans. Recent surveys report that 70 percent of all blacks in South Africa support economic sanctions. As Bishop Tutu said; "Blacks are saying, 'We are suffering already. To end it, we will support sanctions, even if we have to take on additional suffering.' " * * * I must ask, to whom is the international community willing to listen? To the victims and their spokesmen, or to the perpetrators of apartheid and those who benefit from it?

Finally, there are those who say that sanctions will destroy the South African economy and leave that nation in a financial and economic morass. But if the South African Government continues on its present course, then with or without sanctions, the South African economy will be destroyed by the violence and bloodshed that are now threatening to explode into all-consuming civil war.

The case for economic sanctions is clear. Quiet diplomacy has failed; only concerted economic pressure from the international community—combined with continued peaceful pressure inside South Africa—can persuade the apartheid regime to change course.

99TH CONGRESS
2D SESSION

S. 2498

To prohibit loans to, other investments in, and certain other activities with respect to, South Africa, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 21 (legislative day, MAY 19), 1986

Mr. KENNEDY (for himself, Mr. WEICKER, Mr. PROXMIRE, Mr. SPECTER, Mr. BIDEN, Mr. SARBANES, Mr. CRANSTON, Mr. KERRY, Mr. LEVIN, Mr. BRADLEY, Mr. HART, Mr. RIEGLE, Mr. METZENBAUM, Mr. LEAHY, Mr. LAUTENBERG, Mr. HARKIN, and Mr. SIMON) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To prohibit loans to, other investments in, and certain other activities with respect to, South Africa, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti-Apartheid Act of 1986".

SEC. 2. PROHIBITIONS ON LOANS TO, NEW INVESTMENT IN, AND OTHER ACTIVITIES INVOLVING SOUTH AFRICA.

(a) PROHIBITIONS.—

(1) ON UNITED STATES PERSONS.—No United States person may, directly or through another person—

(A) make any loan or other extension of credit to, or provide funds for the purpose of making a loan or other extension of credit to, the Government of South Africa or any corporation, partnership, or other organization which is owned or controlled by the Government of South Africa, as determined under regulations which the President shall issue;

(B) otherwise make any investment in South Africa;

(C) contribute technology or technological information, training, or services of any kind to the exploration for, or the research, development, or production of, new, or to the expansion of existing, energy sources in, for, or on behalf of South Africa; or

(D) make any deposit in—

(i) a foreign bank which is organized under the laws of South Africa or owned or controlled by South African nationals; or

(ii) a branch of a bank or foreign bank if that branch is located in South Africa.

(2) ON CERTAIN FOREIGN BANKS—(A) No foreign bank which is organized under the laws of South Africa or owned or controlled by South African nationals may establish or operate any branch or agency in the United States.

(b) EXCEPTIONS.—

(1) The prohibition contained in subsection (a)(1)(A) shall not apply to any loan or extension of credit for which an agreement is entered into before May 21, 1986.

(2) The prohibition contained in subsection (a)(1)(B) shall not apply to an investment which consists of earnings derived from a business enterprise in South Africa established before May 21, 1986, and which is made in that business enterprise.

(3) The prohibition contained in subsection (a)(1)(C) shall not apply with respect to a contract entered into before May 21, 1986.

SEC. 3. BAN ON IMPORTATION OF URANIUM, COAL, AND STEEL.

Notwithstanding any other provision of law, the following products of South Africa may not be imported into the United States: uranium ore, uranium oxide, coal, and steel.

SEC. 4. CONDITIONAL DIVESTITURE FROM COMPUTER INDUSTRY.

(a) PROHIBITIONS.—Unless the conditions set forth in subsection (b) are met within 12 months after the date of the enactment of this Act, then—

(1) effective 6 months after the end of that 12-month period, no United States person may, directly or indirectly, make or hold any investment in South Africa in a business enterprise that sells computers, computer software, or goods or technology intended to service computers; and

(2) no computers, computer software, or goods or technology intended to service computers may be exported, directly or indirectly, to South Africa.

(b) CONDITIONS.—The conditions referred to in subsection (a) are the following:

(1) The President certifies to the Congress that the Government of South Africa—

(A) has freed Nelson Mandela and all political prisoners, and has entered into good faith ne-

gotiations with truly representative leaders of the black majority for a new political system; or

(B) has totally dismantled the apartheid system.

(2) A joint resolution is enacted approving the President's certification.

(c) DEFINITION.—For purposes of subsection (a)(2), the term "computer" includes any computer that is the direct product of technology of United States origin.

(d) PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTIONS.—

(1) REFERRAL OF JOINT RESOLUTIONS.—All joint resolutions introduced in the House of Representatives and the Senate shall be referred immediately to the appropriate committees.

(2) COMMITTEE DISCHARGE.—If the committee of either House to which a joint resolution has been referred has not reported it at the end of 30 days after its introduction, the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

(3) CONSIDERATION OF RESOLUTIONS.—A joint resolution under this subsection shall be considered in the Senate in accordance with the provisions of section

601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this subsection, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this subsection which may be similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

(4) RECEIPT OF RESOLUTIONS FROM THE OTHER HOUSE.—If before the passage by one House of a joint resolution of that House, that House receives a joint resolution with respect to the same matter from the other House, then—

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

(5) COMPUTATION OF LEGISLATIVE DAYS.—In the computation of the period of 30 days referred to in

paragraph (2), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

(6) JOINT RESOLUTION DEFINED.—For purposes of this subsection, the term "joint resolution" means a joint resolution the matter after the resolving clause of which is as follows: "That the Congress, having received on a certification by the President under section 4(b)(1) of the Anti-Apartheid Act of 1986, approves the President's certification.", with the date of the receipt of the certification inserted in the blank.

SEC. 5. ASSISTANCE FOR SOUTH AFRICA.

(a) AUTHORIZED ANNUAL AMOUNT OF ASSISTANCE.—In addition to any amount used for the Human Rights Fund for South Africa, up to $25,000,000 may be used each fiscal year for assistance for South Africa under the Foreign Assistance Act of 1961 and section 2(b) of the Migration and Refugee Assistance Act of 1962.

(b) USES OF ASSISTANCE.—Of the assistance authorized by subsection (a)—

(1) $4,000,000 shall be for refugee education assistance programs; and

(2) the remainder shall be for community development projects that are selected in consultation with truly representative leaders of South Africans disadvantaged by the apartheid system, that are under the leadership and control of such disadvantaged South Africans, and that are not conducted by or through organizations in South Africa financed or controlled by the Government of South Africa.

(c) REPORTS.—Not later than the end of each calendar quarter, the President shall transmit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report setting forth—

(1) the names and a description of the recipients of assistance that are described in subsection (b)(2);

(2) the amounts of assistance granted to each such recipient; and

(3) who was consulted in selecting such recipients.

(d) EFFECTIVE DATE.—This section shall apply with respect to assistance in fiscal year 1987 and thereafter.

SEC. 6. PROHIBITION ON LANDING RIGHTS OF SOUTH AFRICAN AIRCRAFT.

(a) PROHIBITION.—The Secretary of Transportation shall prohibit the takeoff and landing of any aircraft by an air

carrier owned, directly or indirectly, by the Government of South Africa or by South African nationals.

(b) EXCEPTIONS FOR EMERGENCIES.—The Secretary of Transportation may provide for such exceptions from the prohibition set forth in subsection (a) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers are threatened.

(c) DEFINITIONS.—For purposes of this section, the terms "aircraft" and "air carrier" have the meanings given those terms in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301).

SEC. 7. REGULATORY AUTHORITY.

The President shall issue such regulations, licenses, and orders as are necessary to carry out this Act. The President shall issue such regulations not later than 90 days after the date of the enactment of this Act.

SEC. 8. ENFORCEMENT AND PENALTIES.

(a) AUTHORITY OF THE PRESIDENT.—Subject to subsection (b), the President shall take the necessary steps to ensure compliance with this Act and any regulations, licenses, and orders issued to carry out this Act, including establishing mechanisms to monitor compliance with this Act and such regulations, licenses, and orders. In ensuring such compliance, the President may conduct investigations, hold hearings, administer oaths, examine witnesses, receive evi-

dence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation.

(b) ENFORCEMENT OF PROHIBITION ON FOREIGN BANKS.—The Comptroller of the Currency, in the case of a Federal branch or agency, and the Board of Governors of the Federal Reserve System, in the case of any other branch or agency, shall take the necessary steps to ensure compliance with section 2(a)(2), including revoking any existing authority of any foreign bank subject to the prohibition in section 2(a)(2) to establish or operate a branch or agency in the United States.

(c) PENALTIES.—

(1) FOR PERSONS OTHER THAN INDIVIDUALS.—Any person, other than an individual, that knowingly violates the provisions of this Act or any regulation, license, or order issued to carry out this Act shall be fined not more than $500,000.

(2) FOR INDIVIDUALS.—Any individual who knowingly violates the provisions of this Act or any regulation, license, or order issued to carry out this Act shall be fined not more than $250,000, or imprisoned not more than 5 years, or both.

(d) ADDITIONAL PENALTIES FOR CERTAIN INDIVIDUALS.—

(1) IN GENERAL.—Whenever a person commits a violation under subsection (c)—

(A) any officer, director, or employee of such person, or any natural person in control of such person who willfully ordered, authorized, acquiesced in, or carried out the act or practice constituting the violation, and

(B) any agent of such person who willfully carried out such act or practice,

shall be fined not more than $250,000, or imprisoned not more than 5 years, or both.

(2) RESTRICTION ON PAYMENT OF FINES.—A fine imposed under paragraph (1) on an individual for an act or practice constituting a violation may not be paid, directly or indirectly, by the person committing the violation itself.

(e) SEIZURE AND FORFEITURE OF AIRCRAFT.—Any aircraft used in connection with a violation of section 6 or any regulation, license, or order issued to carry out that section shall be subject to seizure by and forfeiture to the United States. All provisions of law relating to the seizure, forfeiture, and condemnation of articles for violations of the customs laws, the disposition of such articles or the proceeds

from the sale thereof, and the remission or mitigation of such forfeitures shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under this subsection, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Department of the Treasury shall, for purposes of this subsection, be exercised or performed by the Secretary of Transportation or by such persons as the Secretary may designate.

SEC. 9. NEGOTIATIONS; REPORTS TO CONGRESS.

The President shall, by means of both bilateral and multilateral negotiations, including through the United Nations, attempt to persuade the governments of other countries to adopt restrictions on activities with respect to South Africa consistent with the provisions of this Act. The President shall submit annual reports to the Congress on the status of negotiations under this section. Each such report shall include a description of—

(1) the extent to which other countries have adopted restrictions consistent with the provisions of this Act; and

(2) the extent to which nationals of those countries have complied with any such restrictions, or have

taken actions to diminish the impact on South Africa of the provisions of this Act.

SEC. 10. REPORT TO CONGRESS WITH RESPECT TO DIVESTITURE; TERMINATION OF PROVISIONS OF ACT.

(a) REPORT BY THE PRESIDENT.—The President shall, after May 31, 1988, and before June 30, 1988, report to the Congress on whether the Government of South Africa has met the conditions set forth in subsection (d). If the President determines that the conditions have not been met, the President shall include in the report his recommendations as to whether United States persons should be required to divest themselves of their investments in South Africa.

(b) DETERMINATION OF MET CONDITIONS.—If the President determines, at any time after the report made under subsection (a), that the conditions set forth in subsection (d) have been met, the President may submit that determination, and the basis for the determination, to the Congress.

(c) CONGRESSIONAL ACTION TERMINATING PROVISIONS OF THE ACT.—Upon the enactment of a joint resolution approving a determination of the President under subsection (a) or (b) that the conditions set forth in subsection (d) have been met, the provisions of this Act, and all regulations, licenses, and orders issued to carry out this Act, shall terminate.

(d) STATEMENT OF CONDITIONS.—The conditions referred to in subsections (a) and (b) are that the Government of South Africa—

(1) has freed Nelson Mandela and all political prisoners, and has entered into good faith negotiations with truly representative leaders of the black majority for a new political system; or

(2) has totally dismantled the apartheid system.

SEC. 11. DEFINITIONS.

(a) IN GENERAL.—Subject to subsection (b), for purposes of this Act—

(1) UNITED STATES PERSON.—The term "United States person" means any United States resident or national and any partnership, corporation, or other entity organized under the laws of the United States or of any of the several States, of the District of Columbia, or of any commonwealth, territory, or possession of the United States.

(2) INVESTMENT IN SOUTH AFRICA.—The term "investment in South Africa" means—

(A) a commitment of funds or other assets (in order to earn a financial return) to a business enterprise located in South Africa or owned or controlled by South African nationals, including—

(i) a loan or other extension of credit made to such a business enterprise, or security given for the debts of such a business enterprise;

(ii) the beneficial ownership or control of a share or interest in such a business enterprise, or of a bond or other debt instrument issued by such a business enterprise; or

(iii) capital contributions in money or other assets to such a business enterprise; or

(B) the control of a business enterprise located in South Africa or owned or controlled by South African nationals, in cases in which subparagraph (A) does not apply.

(3) SOUTH AFRICA.—The term "South Africa" includes—

(A) the Republic of South Africa;

(B) any territory under the administration, legal or illegal, of South Africa; and

(C) the "bantustans" or "homelands", to which South African blacks are assigned on the basis of ethnic origin, including the Transkei, Bophuthatswana, Ciskei, and Venda.

(4) BUSINESS ENTERPRISE.—The term "business enterprise" means any organization, association,

branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any corporation, partnership, or other organization which is owned or controlled by the Government of South Africa, as determined under regulations which the President shall issue.

(5) BRANCH.—The term "branch" means the operations or activities conducted by a person in a different location in its own name rather than through a separate incorporated entity.

(6) SOUTH AFRICAN NATIONAL.—The term "South African national" means—

(A) a citizen of South Africa; and

(B) any partnership, corporation, or other entity organized under the laws of South Africa.

(7) CONTROL BY SOUTH AFRICAN NATIONALS.—South African nationals shall be presumed to control a business enterprise or foreign bank if—

(A) South African nationals beneficially own or control (whether directly or indirectly) more than 50 percent of the outstanding voting securities of the business enterprise or bank;

(B) South African nationals beneficially own or control (whether directly or indirectly) 25 percent or more of the voting securities of the busi-

ness enterprise or bank, if no other person owns or controls (whether directly or indirectly) an equal or larger percentage;

(C) the business enterprise or bank is operated by South African nationals pursuant to the provisions of an exclusive management contract;

(D) a majority of the members of the board of directors of the business enterprise or bank are also members of the comparable governing body of a South African national;

(E) South African nationals have the authority to appoint a majority of the members of the board of directors of the business enterprise or bank; or

(F) South African nationals have the authority to appoint the chief operating officer of the business enterprise or bank.

(8) CONTROL BY UNITED STATES PERSONS.—A United States person shall be presumed to control a business enterprise in South Africa if—

(A) the business enterprise is operated by the United States person pursuant to the provisions of an exclusive management contract;

(B) a majority of the members of the board of directors of the business enterprise are also

members of the comparable governing body of the United States person;

(C) the United States person has the authority to appoint a majority of the members of the board of directors of the business enterprise; or

(D) the United States person has the authority to appoint the chief operating officer of the business enterprise.

(9) LOAN.—The term "loan" includes an extension of credit as defined in section 201(h) of the Credit Control Act (12 U.S.C. 1901(h)).

(10) BANK.—The term "bank" means—

(A) any depository institution as defined in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A));

(B) any corporation organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611 et seq.);

(C) any corporation having an agreement or undertaking with the Federal Reserve Board under section 25 of the Federal Reserve Act (12 U.S.C. 601 et seq.); and

(D) any bank holding company as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(a)).

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(11) POLITICAL PRISONER.—The term "political prisoner" means any person in South Africa who is incarcerated or persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion, but the term "political prisoner" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

(b) ADDITIONAL DEFINITIONS.—For purposes of—

(1) section 2(a)(1)(C)—

(A) the term "energy sources" includes both mineral and nonmineral fuel resources, including solar, geothermal, fossil, nuclear, electrical, and synthetic fuel energy resources;

(B) the term "development" includes those activities conducted to make energy sources available or usable, including drilling and the construction or other preparation of facilities or other means for the removal or conversion to usable form of any energy source;

(C) the term "production" includes those activities conducted for the removal or conversion to usable form of any energy source, including refin-

ing, milling, any other processing, generation, transmission, and storage; and

(D) the term "services" includes construction, engineering, design, management, and maintenance services;

(2) sections 2(a)(1)(D), 2(a)(2), and 8(b), the term "foreign bank" has the meaning given that term in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 1301(b)); and

(3) sections 2(a)(2) and 8(b), the terms "agency", "branch", "Federal agency", and "Federal branch" have the meanings given those terms in section 1(b) of the International Banking Act of 1978.

SEC. 12. APPLICABILITY TO EVASIONS OF ACT.

This Act and the regulations issued to carry out this Act shall apply to any person who undertakes or causes to be undertaken any transaction or activity with the intent to evade this Act or such regulations.

SEC. 13. CONSTRUCTION OF ACT.

Nothing in this Act shall be construed as constituting any recognition by the United States of the homelands referred to in section 11(a)(3)(C).

Senator HEINZ. Senator Kennedy, thank you for an extremely eloquent and very well-documented statement.

Lowell Weicker, you had your chance to go first. I have no doubt, however, you will do a very good job batting cleanup here on this panel.

STATEMENT OF SENATOR LOWELL P. WEICKER, JR., U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator WEICKER. Thank you very much, Mr. Chairman.

I am very moved both by the statements of the chairman and members of the panel and my colleague, Ted Kennedy. I really couldn't help but recall, since we just came back from a recess period, in hearing these remarks that we've also just gone through that great celebration with the Statue of Liberty and I would suggest that no fireworks display or extravaganza with Hollywood stars could send a clearer message to the world than action by our constitutional process—the Senate, the House, the President of the United States—if we want to celebrate what the Statue of Liberty stands for, go ahead and pass the bill and say what we stand for in terms of how we view human dignity, in terms of what the United States is going to stand up and be heard on throughout the world.

Now the events of about a week ago are going to be forgotten, but what we can do won't be forgotten in the impact that it has.

DEBATE DRAGGING ON FOR 2 YEARS

This debate, I might add, has been dragging on now for 2 years and I think that's the disgrace that we all share in. We're one-third of that constitutional process. I don't see where Executive orders, hints as to who may or who may not be the Ambassador to South Africa, political speeches that hint of a change in policy—none of that is a substitute for us doing our job.

I would hope, Mr. Chairman, that this bill, as indicated by Senator Proxmire, would get marked up and out of the committee and onto the floor of the Senate because I think what we could possibly be confronted with if we take the action that's appropriate is not just passage by the Senate and conference with the House voting on a conference report, but also potentially the override of a Presidential veto. That takes time and unless action is taken and taken in this session of the Congress, believe me, we'll all get out of here and we'll wash our hands of this matter until the new Congress has to take it up, and that's not satisfactory and it's not what will stand as testimony to the courage of the Government and the people of the United States.

CARNAGE OF BLACKS IN SOUTH AFRICA

This debate again occurs at a time of crisis for South Africa and the entire region. In only one area of the debate has there been an advance and that's not been progress. Rather, a grim progression of the number of South Africans dead.

In March, 171 lives were lost, the greatest death toll in a single period since 1984. And since that time the death toll has averaged 100 persons a month.

Little more than a year ago I appeared before this committee as a sponsor of economic sanctions legislation against the Government of South Africa. I said at that time that the context in which this Nation can understand the South African system is in the form of government well understood in our history, and that's the government of Nazi Germany. A lot of people were appalled that I made that comparison, but it's a true comparison.

The Nazis came to power in 1932 on a platform of economic revival and anticommunism. In 1933, laws were passed excluding non-Aryans from civil service and requiring classification of citizens by race. Then a national press law excluded Jews from the press and educational opportunities were restricted. In 1934 Jews were declared noncitizens, forbidden to marry non-Jews, denied protection of German law under what was called the Reich Citizenship law, and the law for the protection of German blood and German honor.

The legal foundations of apartheid are very similar to those of nazism. The laws entitled the Prohibition of Mixed Marriages Act, the Population Registration Act, and the Suppression of Communism Act were passed in 1951. And finally, the Bantu Authorities Act was passed in an attempt to force blacks into tribalism and deny them political rights as basic as citizenship.

Since that time, we've heard of a wave of reform by the Government of South Africa. The President of South Africa, Mr. P.W. Botha, said in a speech to the three Houses of Parliament in June that his "Government's point of view is that all people should be accorded political participation at all levels of decisionmaking which affect their lives." But the true nature of current South Africa reform lays in falsehood.

The Mixed Marriages Act was scrapped, but still married people from different races are not allowed to live together where they choose.

Forced removals from the townships have been ended in word, but in fact the police continue to abet violence by surrogates who force migration by violence.

And the creation of the legislative assemblies of coloreds and Indians look like reform on paper, but the Assembly's refusal to approve the new state of emergency made no difference to the executive branch in South Africa where the real power is vested. The legislative branch was ignored.

The reason Nazi Germany is a relic of history is due to the concerted efforts of an outraged world led by the United States. The efforts of this Nation in that conflict against racism and military aggression placed America in a position of influence and moral leadership that continues in large measure to this day.

Now in many quarters we are perceived by the people of South Africa as an enemy of democracy and an apologist of apartheid.

ATTITUDE OF INDIFFERENCE AND INACTION

How has this Nation, the leader of the free world, become an enemy in a battle that is basic to American principles? It's because of indifference and because of inaction and because of the insist-

ence that we view the Government of South Africa as a necessary evil, a friendly outpost of superpower conflict.

The policy that has led us to this point is called constructive engagement and the bottom line of this policy has always been negotiation. That is full and frank discussion with interested parties leading to peaceful settlement. But that policy is in ruins. It has absolutely no credibility whatsoever.

It's nice to hope, but that hope on our part to some easy solution, the route of constructive engagement, has to be paid for in the carnage of lives, the dead and dying in South Africa.

The South African Government in recent weeks has sealed the door to negotiation and they have reduced constructive engagement to an international embarrassment. There's no way to negotiate when some 4,000 black leaders and activists, the very core of black democratic leadership, is in prison without charge and without recourse and in great danger of their lives.

Our inaction as a democratic nation is ridiculed by all. We are not considered a dependable ally in the repression practiced by the Government of South Africa, and that's a minor loss for a government that has adjusted itself to international criticism for years. But we are also not considered a dependable ally of the people. We are not a dependable ally of the people that we refuse to place our name on the line for, to place our name on the line on the side of progress. And by progress, I mean full political participation by all the people of South Africa.

In the face of this political stagnation and personal tragedy, it remains for Congress, for this committee, for the Senate, for the House, for the President of the United States, in response to the will of the American people, to break the cycle.

The bill before the subcommittee is a clear message to the South African Government and the South African people and I say to you, Mr. Chairman, that this bill is outdated. It's not strong enough. Indeed, I hope you have a markup and I hope you go ahead and mark it up and have a complete substitute for the bill, more specifically the House response, the bill that Senator Cranston, Senator Kennedy and myself put together, S. 2570.

Listen to the voices from within South Africa in recent weeks. If the administration insists on being blind to consequence, cannot the Congress—Republican and Democrat—pursue a vision of promise?

The Sunday Tribune of Durban, South Africa writes:

> Ours is a country which could have been by now one of the powerhouses not just of the African Continent but of the Western world, and that it still will be. That some day when purged of the last of its racial practices, when apartheid is finally nothing more than a stain in its relatively brief history, it will take its place as a major link between the emerging Third World and the established first.

And the Sunday Times of Johannesburg writes June 15:

> One thing must be recognized. A state of emergency may provide a breathing space. It is not a solution. The garrison state cannot hold out forever, nor would decent people want to live inside it. Along that road lies degenerative collapse. The priority therefore must be the speediest possible return to normality and then the last vestiges of wicked apartheid must be eradicated swiftly, visibly, and with such finality that the Government can honestly proclaim it to be dead and be believed when it says so.

MUST NOT ABANDON BLACKS OF SOUTH AFRICA

The question each Member of Congress faces in this debate is how could we afford to abandon South Africa? The answer to that question is simple. Our call is not to abandon South Africa. In reality, we embrace South Africa—the future democratic South Africa—by abandoning apartheid. That's what we're being asked to abandon.

The Assistant Secretary of State, Chester Crocker, said recently: "We take it as a given that apartheid is a doomed system. What matters is how it ends and what follows it." No government can dictate South Africa's future but the question the American people must consider is whether this Nation should continue to resist inevitable change in league with South Africa's apartheid past or respond to the leadership of South Africa's future.

But the time is short and the killing continues and the voices of moderation flounder in a gathering storm of revolution.

Bishop Desmond Tutu, an unassailable prophet of peace, told the world in March nearly a year after this subcommittee's first hearing on the subject of South Africa:

> Our land is burning and bleeding, so I call on the international community to apply punitive sanctions against this Government to help us establish a new South Africa, nonracial, democratic, participatory, and just. I have no hope of real change from this Government unless they are forced.

So, Mr. Chairman, the time has come to apply that force. With a clear voice, the American people stand on the side of a democratic rebirth in South Africa. We can only succeed by giving support to those in South Africa who continue to raise the banner of Western democracy as an example for the future, rather than to have the banner of communism be the only one they see.

This is a contest not just black versus white in South Africa. It's a contest as to what this Nation and our democratic processes stand for as compared to the totalitarianism that is being offered as the alternative under a different name, albeit communism instead of the Government of South Africa, but still totalitarianism, and the hope for a change. And for anybody to ask, well, can't they see they'll get nothing better in that form of government? "No," not when you have no food for your child, when your family is diseased, when there's no roof over your head—"No." We can make those pontifical judgments from on high. That's not an easy judgment for the person who is starving or dying. And that happens by the hundreds in South Africa.

So this is our contest, the contest of the United States of America, whether those ceremonies mean anything on Staten Island or in New York Harbor. Do they mean anything or is it just one big party to celebrate our heritage? It's time we created a future for ourselves, indeed for the world. That's the issue here. If they fail, we fail. If indeed change comes about and a new government comes about, then indeed this is still a vital, young democracy and will lead the world.

I thank the committee very much.

Senator HEINZ. Senator Weicker, thank you for a very moving statement. Gentlemen, you have been in the forefront of advocating very strong economic measures against South Africa. When I

say very strong, we're talking about disinvestment, about significant trade embargos. That is the substance that you've endorsed.

And one question that I think occurs to many of us is whether those actions, strong as they are, are solely going to have the effect of being symbolic and moral, which they certainly are, or whether they will also put real economic pressure on the South African Government to change?

Making a distinction between moral pressure and isolating them in the international community, and economic pressure, do we believe that our sanctions—if the Cranston-Kennedy-Weicker bill, for example, were to be enacted—do we believe that those economic sanctions would have a sufficient economic impact that we could actually point to and identify clearly?

Let me ask Ted Kennedy that because he was in South Africa about 1 or 1½ years ago.

Senator KENNEDY. First of all, Mr. Chairman, you have, for the sake of argument, excluded the whole question of the moral content of the policy. I think that is a compelling aspect of the policy, but in your question you remove it. So let's deal with the facts and the conclusions that those of us who sponsor this legislation have drawn from those facts. Those conclusions are supported in a very eloquent manner by the EPG and also by the most prominent spokesmen in South Africa who are opposed to violence.

SANCTIONS ALONE WILL NOT END APARTHEID

We don't expect that, if we adopt either the disinvestment bill or the economic sanctions bill that this by itself will end apartheid. That's No. 1.

When we recommended the actions that we took last year, we pointed that out. There are those who say, "Well, no one can think that if the United States just imposes sanctions it's going to end apartheid"; we point out at the outset that we agree; we don't believe that will happen. But what we do believe to be the case is that the only way that you're going to get change in South Africa is by internal action—which we have seen taking place every single day by those who believe in nonviolence and increasingly by those that are turning to violence—and by external pressure.

And if we believe that the United States is, as Senator Weicker so eloquently stated, the last best hope of mankind in the world and the beacon of hope, it is imperative that we lead the world.

So, first, we believe that there has to be internal action as well as external pressure.

Second, it's extremely difficult to expect other countries around the world to take action unless the United States is also prepared to take action.

Third, we have seen that this administration with regards to Nicaragua, with regards to Libya, is prepared to impose sanctions but, when it comes to South Africa, it has curiously refused to take action.

Finally, it's important outside to recognize some important facts: The United Kingdom has about 50 percent of direct foreign investment and the United States is second with about 18 percent. And so although our investment in South Africa is only 1 percent of

overall United States investment abroad, we have an important impact in terms of their total economic situation.

The South African Government understands the power of these sanctions. They may attempt to diminish their importance. They may make statements, as Mr. Botha has, that they are quite prepared to go it alone, but I think every thoughtful, competent, knowledgeable individual would say that economic sanctions put in place and then vigorously enforced and then urged upon our allies would have an important impact in terms of the South African economic condition.

Senator HEINZ. Senator Weicker, do you agree?

Senator WEICKER. Yes, I agree. I think that—and it was alluded to by Senator Kennedy and others on your panel—the fact that if we don't do anything, why should Mr. Botha change? In effect, we have a lot of words coming forth from the United States but no action. And I think he continues to thumb his nose at us and I would if I were him. I think that is an enormously important aspect to consider as far as concrete action by the United States.

Senator HEINZ. But unlike the situation where what was then Southern Rhodesia was faced in effect with stiff economic sanctions, ironically by South Africa, if they didn't decide to bring about constitutional change and power sharing, these economic sanctions are unlikely to have the same powerful effect that South Africa putting the screws to Southern Rhodesia and its eventual transformation in Zimbabwe brought about.

NEED FOR OTHER NATIONS TO JOIN IN SANCTIONS

Senator WEICKER. Well, I would again point out the statistics which Senator Kennedy has cited which are correct. Between Great Britain and the United States, you're talking close to 70 percent of their trade. I would suggest that that would have a substantial impact if Great Britain would join us right now. And there's what we're talking about. There's the chain reaction. I have no doubt if these sanctions are passed by the United States, and the bill is signed by the President of the United States, that would have Mrs. Thatcher considering as to what her position would be and other leaders throughout the world.

Senator KENNEDY. I would just make one very brief additional comment. The members of this committee have reviewed the whole question about sanctions—whether they are effective or noneffective. And there are a lot of conclusions that could be drawn from it. They cannot work, I believe—and I think history indicates so—if they operate in a sea of isolation. I mean, I don't think that you can expect that they are going to function and function effectively without the cooperation of other countries.

On the other hand, if they are going to operate as part of a shared common economic policy, I think the results of past history have shown they have been effective. I think you would get that cooperation from the rest of Africa. You're getting it with regards to the EPG countries, the Commonwealth countries. And if we could get cooperation from the rest of the world, it would be very, very powerful.

Senator WEICKER. Is there any question either, Mr. Chairman, to follow on what Senator Kennedy is talking about—is there any question after you move from the United Kingdom and the United States you then move to the State of Israel and West Germany, that indeed what we do is going to be followed by those nations? No doubt in my mind as to what's going to happen.

But nobody is going to move until we move and that's what we're talking about here.

Senator HEINZ. Let's assume that we make our movement and others will follow. There's another question that we really didn't explore very effectively in our last hearings and that is that if you do what is now being advocated, which is much more far-reaching in its consequence—last time the two of you were here you were advocating no new investment. You were advocating banning importation of krugerrands. Today you're advocating virtual cessation of economic relations between the United States and South Africa.

Senator WEICKER. Correct.

Senator HEINZ. And there's a distinction and a difference between the two positions. The one of last year preserves some leverage or position or presence in South Africa.

What you're advocating today basically does not preserve much in the way of presence in South Africa. And is there, in either of your judgments, an argument to be made for preserving some presence or should we simply throw the book and the cover and everything we have in the library at South Africa and end any presence that potentially could be at some future time useful for leverage?

Do you want to tackle that, Senator Weicker?

TIME FOR ACTION

Senator WEICKER. I would be glad to tackle it very simply at this juncture. We're not talking de novo. Where we've been through a long experience here—I cited the fact it's been 2 years since we've been grappling with this problem and failing to deal with it. So everybody has been put on notice and there comes a time when the notice period should be over and the action starts.

As far as I'm concerned, we ought to have an Embassy in South Africa and that's the beginning and the end of it.

Senator HEINZ. Well, then, if, Senator Kennedy, if you agree with that, let me ask, have we reached the point——

Senator KENNEDY. The fact that remains, Mr. Chairman, the most thoughtful individuals, American businessmen and women in South Africa, believe that even with the implementation of the Sullivan principles, that U.S. business is perpetuating apartheid in South Africa. That is an important and significant conclusion. It carries forward what Senator Weicker has said, that we're building upon a long and continuing effort and that the time for action by the United States is now. We recognize it's going to take time to get the other countries to move. I'm hopeful that they will.

I believe that the day we pass a disinvestment bill will probably be the day that the Government of South Africa lets Nelson Mendela out of jail and meaningful negotiations begin.

And that is clearly our objective—the establishment of democratic institutions, majority rule with protection of minority rights.

Senator HEINZ. Senator Kennedy, I'm glad you brought that up because the goals that we hope to achieve through sanctions need to be examined. My time has expired but I have no doubt that other members of the committee will discuss that with you. If they don't, I will because it's a very significant point in all your legislative proposals and needs to be clarified because it's different this year than it was last year.

Senator Proxmire.

Senator PROXMIRE. Thank you, Mr. Chairman.

Senator Weicker, on June 2, Secretary of State Shultz spoke to a conference of religious leaders. He said that those calling for punitive economic sanctions against South Africa fail to make a convincing case. He went on to say:

> You must recognize that in the past year the South African Government has begun meaningful reform. It has abolished laws against mixed marriages. It has expanded some forms of property rights for blacks. It has reformed the pass laws, the tools of day-to-day control over the black population.

NO SIGNIFICANT REFORM

How do you answer the administration's contention that its policy of constructive engagement, that is constantly reassuring the Botha government of our friendship and support, has begun to work and is more apt to bring about the demise of apartheid than is a policy of economic sanctions?

Senator WEICKER. I don't want to get into a broad foreign policy debate vis-a-vis the remarks of the Secretary of State because he and I disagree on many things, but I would answer that statement with the facts. And the facts of dead and dying completely repudiate that statement. Insofar as the laws that he mentioned, there's been no significant reform, as I alluded to in my earlier statement.

So could the dead and dying speak, I think they would certainly unanimously condemn this policy of the administration. And indeed, the administration itself from time to time has indicated that it would like to move away from its own policies, only they would like to do so in a painless way. And I don't know a painless way. There just isn't one.

Let me tell you something, Senator Proxmire. This is even beginning to infect us in this Nation. Next week I've got to go be a character witness for Randall Robinson, a character witness for a man who, believe me, stands for everything that the Star Spangled Banner and the Red, White, and Blue and all of it is supposed to mean, because he has stood up from day 1. When there was nobody to stand out there on Massachusetts Avenue, he stood up and said this is wrong. And finally, one by one, we all started to join his banner. And I've got to be a character witness for him. Well, I've got no problem being a character witness. I think he's the finest of our citizens in this Nation. It's now coming to the courtrooms of the United States. And instead of having that kind of character affirmed, it's put on trial. And that's wrong. And the only person who can make that right and fast is that individual—that administration that leads our Nation and those in the legislative branch such as we are.

So I would say that the policy, both in light of facts of what occurs in South Africa and in terms of the damage of what it causes to those of us that idealistically believe in that Constitution and that Declaration of Independence, believe me, it's a terrible policy and it's gnawing away both abroad and at home.

Senator PROXMIRE. So your response is, as I understand it, that while there may be some changes in South Africa, the fundamental change which is the right of the black South African majority to have a vote is not changed at all?

Senator WEICKER. Not changed one iota and they are the majority—to have this pieced out, in other words, as if they were foreigners in their own country. This is their country, as much I might add as the white South Africans' country, but that's not the way they're viewed. They're aliens. They are foreigners. They are enemies within their own land.

Senator KENNEDY. Just very briefly, the best description of what has been done in the way of so-called reforms is contained in this excellent open letter to P.W. Botha by Andre Briak. If I could just take a moment of the committee's time to read from this letter, it says it as well as I've ever seen it written:

> So you scrapped the Mixed Marriages Act but then refused to allow married people from different races to live together where they choose. You end forced removals and then coincidental violence involving your security forces happens to encourage the homeless to move voluntarily. You abolish the pass laws, then you set about arresting countless blacks for trespassing. You bring a handful of colored and Indian people into Parliament and offer them an illusion of power sharing, but the moment they hesitate to cooperate in passing some of the most Draconian legislation this country has ever seen, you treat them like schoolboys and press ahead with the legislation regardless. You tell us that you're Christians and you send in your forces to fire teargas at funeral processions forcing the mourners to drop their coffins in the road. And when we profess we cannot believe you, you try to end all criticism by imposing the big silence.

That says it as well as words in the English language can state it.

BOTHA'S ADDRESS TO PARLIAMENT

Senator PROXMIRE. Senator Kennedy, on June 12, President Botha addressed a joint session of South Africa's three Houses of Parliament. He defended his Government's reimposition of martial law and said:

> It is well aware of the fact that stricter security action will elicit strong criticism and even punitive measures from the outside world.

He then went on to charge:

> The call for sanctions presently heard in the United States of America is a cynical move to buy black votes in the United States of America at the expense of job opportunities for black people in South Africa.

How do you respond to that charge from Botha? Is it only the black community in the United States that strongly opposes apartheid?

Senator KENNEDY. Well, Senator Proxmire, I think first of all, it isn't only those individuals in this country who are concerned. It is also the most eloquent forces for peace in South Africa who have a long proud tradition of commitment to nonviolence—not only Desmond Tutu, Alan Boezak, Beyers Naude, one of the most distin-

guished religious leaders I think in the world—it is also the leaders of the various trade union movement that are today in prison held incommunicado. The conclusions of the EPG are eloquent—and I would urge the members of the committee—we're all pressed for time in reading material—but read through the conclusions of the EPG. They all come to the same conclusion. That group doesn't need the votes for blacks in their particular constituencies. Most of them are ex-political leaders.

Senator PROXMIRE. Would you agree that the opposition in this country to apartheid is not confined to the black Americans?

Senator KENNEDY. The Senator is quite correct in that. I want to say, having said that, I can give you examples of statements of Mr. Botha that deplores apartheid, too, and where we have statements—I think there have been 36 statements made by even the President of the United States deploring apartheid. It's really a question of what you're actually doing.

And I'm not quite prepared to say that those that indicate they're opposed to apartheid are really prepared to address the more basic and fundamental policy issues about what we as a nation actually do about it. Maybe that's a difference without a distinction. I don't think on this particular issue it is.

Senator PROXMIRE. Thank you, Mr. Chairman.

Senator HEINZ. Thank you.

Senator Sarbanes.

Senator SARBANES. Thank you, Mr. Chairman.

Mr. Chairman, I wasn't here at the outset. I just want to make a couple of remarks before I direct a question to our colleagues.

The gravity of the situation in South Africa and the urgency of an appropriate United States response to it is underscored by the eloquent testimony of our colleagues, by your decision to hold this hearing promptly, and by the recent action of the House of Representatives approving sweeping economic sanctions against South Africa.

Last year the Senate approved legislation 80 to 12. Sanctions legislation had earlier been voted in the House. The conference agreement was subsequently approved overwhelmingly in the House. It was on its way to approval in the Senate by a very large margin.

SANCTIONS NIPPED BY EXECUTIVE DECREE

It was in anticipation of decisive congressional action that the administration by Executive decree imposed limited sanctions and the Congress did not then proceed to enact legislation. I regret that that was the case. I think it would have been better had the Congress gone on record and placed legislation in the statute books.

With respect to South Africa, it is clear that the situation today is far more serious than it was 1 year ago. The fundamental intransigence of the South African Government is unchanged. Apartheid remains in place. South Africa's black political leadership remains in prison. At the same time, the daily incidence of violence and oppression is worse. More than 130 persons have died since the most recent state of emergency was declared 5 weeks ago. Thousands of persons are estimated to have been detained under the State's sweeping emergency powers.

South African military forces continue to engage in acts of aggression against neighboring states. Extreme restrictions have been imposed on black schools by the Government ministry in charge of black education.

Furthermore, the Government has imposed a subtle and vicious form of press censorship which makes full and accurate reporting impossible and has led the New York Times daily to print a disclaimer on its dispatches from South Africa.

The outrage in South Africa demands our response. The policy of constructive engagement is not merely a failure. It was clearly a failure a year or more ago. It is a tragedy and a disgrace.

The Commonwealth Eminent Persons Group has concluded that:

> The question is not whether sanctions will compel change. It is already the case that their absence and Pretoria's belief that they need not be feared defer change.

Nearly 100 presidents of major American colleges and universities have concluded that:

> Sanctions legislation offers a critical opportunity for the United States to make a forceful, bipartisan statement against apartheid. Legislation will convey more effectively than anything else the breadth and depth of national feeling against apartheid. Such action at this time offers the best prospect of inducing other nations to follow suit, thus placing strong pressure on the South African Government to pursue a different course.

I ask consent that the report of the Eminent Persons Group and the text of the American colleges and universities presidents' letter be included in the hearing record.

Senator HEINZ. Very well. Without objection, so ordered.

Senator SARBANES. And finally, Mr. Chairman, I simply want to quote—and I ask that the entire article be included in the record—an article by Bishop Desmond Tutu in the New York Times on June 16, entitled, "Sanctions Versus Apartheid."

Senator HEINZ. Without objection, the entire article will be included in the record.

[The following was subsequently submitted for the record. (Exception: The report of the "Eminent Persons Group" will be kept in committee files).]

AMERICAN COLLEGES AND UNIVERSITIES,
July 7, 1986.

Hon. ROBERT DOLE,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR DOLE: We wish to express our deep concern about the situation in South Africa and our support for imposing legislative sanctions on the South African Government. We offer our views in our individual capacities and do not purport to speak on behalf of the institutions we serve. But our work has caused us all to give many hours of thought to the injustices of apartheid and to the various ways in which this nation's government and its citizens and private institutions can respond.

Many of us wrote to you in July of last year expressing our belief that legislation directed against the South African Government was an effective way to undermine apartheid and hasten its end. Thereafter, as you know, the President issued an Executive order containing some of the provisions of the legislation which then seemed virtually certain to be enacted by Congress. Since then, however, the crisis in South Africa has worsened so dramatically that we believe that our country must do much more to express a rejection of the apartheid system.

Our conclusions find support in the recent findings of the Commonwealth mission known as the Eminent Persons Group. Their report expresses little hope that the South African government will voluntarily enter into meaningful negotiations that could lead to a peaceful end to apartheid. As they point out, effective concerted

action by the international community seems to offer the last opportunity to bring about such negotiation and avert massive bloodshed.

As the Commonwealth report reached the public, the South African Government instituted new repressive measures which offend fundamental principles of human rights. Censorship has limited the available information on the effects of the measures, but press reports indicate that they have failed to stem the violence and the number of deaths. Indeed, during the last three months, the weekly death toll has more than doubled.

Against this backdrop, sanctions legislation offers a critical opportunity for the United States to make a forceful, bipartisan statement against apartheid. We do not attempt to state the precise features that should be included in the legislation. We do urge that the measures adopted conform to the following criteria:

1. Sanctions should be sufficiently strong to demonstrate the depth and sincerity of this country's disapproval of apartheid.

2. The primary target of the sanctions should be the source of apartheid: the South African Government itself.

3. Sanctions should avoid harming nonwhite South Africans to the extent possible.

4. The legislation should hold forth the prospect of additional measures if certain prescribed forms of progress are not achieved by a specified date.

We speak most effectively as a nation when we speak with one voice through laws enacted by our elected representatives and signed by the President. Legislation will convey more effectively than anything else the breadth and depth of national feeling against apartheid. Such action at this time offers the best prospect of inducing other nations to follow suit, thus placing strong pressure on the South African Government to pursue a different course.

If we do not take this step and the violence continues to mount in South Africa, will we be able to say that we did everything possible to forestall further losses of life? Although no one can state with certainty what steps will bring justice and peace to South Africa most quickly, we believe that legislated sanctions offer the best chance we have of encouraging peaceful change and avoiding increased violence and bloodshed.

Sincerely,

David Alexander, President, Pomona College; Edward J. Bloustein, President, Rutgers University; Derek bok, President, Harvard University; William G. Bowen, President, Princeton University; John Brademas, President, New York University; John Brademas, President, New York University; Carroll W. Brewster, President, Hobart and William Smith Colleges; H. Keith H. Brodie, President, Duke University; William J. Byron, President, Catholic University of America; Colin G. Campbell, President, Wesleyan University; J. Martin Carovano, President, Hamilton College; John T. Casteen III, President, University of Connecticut; Alice Chandler, President, State University of New York, College at New Paltz.

Martha E. Church, President, Hood College; Lattie F. Coor, President, University of Vermont; Henry J. Copeland, President, College of Wooster; Robert A. Corrigan, Chancellor, University of Massachusetts; William R. Cotter, President, Colby College; Richard M. Cyert, President, Carnegie-Mellon University; John DiBiaggo, President, Michigan State University; Robert H. Donaldson, President, Fairleigh Dickinson University; Mary M. Dunn, President, Smith College; Melvin A. Eggers, President, Syracuse University; David W. Ellis, President, Lafayette College; Alice F. Emerson, President, Wheaton College; James F. English, Jr., President, Trinity College.

William P. Gerberding, President, University of Washington; Melvin D. George, President, St. Olaf College; Marvin L. Goldberger, President, California Institute of Technology; Hanna H. Gray, President, University of Chicago; Paul E. Gray, President, Massachusetts Institute of Technology; A. LeRoy Greason, President, Bowdoin College; Sheldon N. Grebstein, President, State University of New York, College at Purchase; W. Lawrence Gulick, President, St. Lawrence University; Sheldon Hackney, President, University of Pennsylvania; Evelyn E. Handler, President, Brandeis University; Paul Hardin, President, Drew University; Bernard W. Harleston, President, City University of New York, City College; Theodore M. Hesburgh, President, University of Notre Dame.

Ira Michael Heyman, Chancellor, University of California, Berkeley; Stephen Horn, President, California State University, Long Beach; Edward B. Jakubauskas, State University of New York, College at Geneseo; Eamon M. Kelly, President, Tulane University; Elizabeth T. Kennan, President, Mount Holyoke College; Donald Kennedy, President, Stanford University; Nannerl O. Keohane, President, Wellesley College; William A. Kinnison, President, Wittenberg University; James T. Laney, President, Emory University; George D. Langdon, Jr., President, Colgate University; Earl E. Lazerson, President, Southern Illinois University; Peter W. Likins, President, Lehigh University; John David Maguire, President, Claremont Graduate School.

Jean Mayer, President, Tufts University; Ellis E. McCune, President, California State University, Hayward; Mary P. McPherson, President, Bryn Mawr College; Paul B. Mohr, Sr., President, Talladega College; Francis C. Oakley, President, Williams College; Joseph A. O'Hare, President, Fordham University; Vincent O'Leary, President, State University of New York; Paul Olum, President, University of Oregon; Robert M. O'Neil, President, University of Virginia; Wesley W. Posvar, President, University of Pittsburgh; Peter R. Pouncy, President, Amherst College; Harold Proshansky, President, City University of New York, Graduate School and University Center; David V. Ragone, President, Case Western Reserve University.

Frank H.T. Rhodes, President, Cornell University; Olin C. Robison, President, Middlebury College; George Rupp, President, Rice University; Benno C. Schmidt, Jr., President, Yale University; Ruth A. Schmidt, President, Agnes Scott College; Donna E. Shalala, President, Hunter College; Harold T. Shapiro, President, University of Michigan; Robert L. Sinsheimer, Chancellor, University of California, Santa Cruz; Michael I. Sovern, President, Columbia University; S. Frederick Starr, President, Oberlin College; Robert B. Stevens, President, Haverford College; Jon C. Strauss, Worcester Polytechnic Institute; Jerome H. Supple, Acting President, State University of New York, College at Plattsburgh.

Howard R. Swearer, President, Brown University; Richard P. Traina, President, Clark University; Rolf A. Well, President, Roosevelt University; Kenneth J. Weller, President, Central University of Iowa; Joe B. Wyatt, Chancellor, Vanderbilt University; Charles E. Young, Chancellor, University of California; Richard C. Atkinson, Chancellor, University of California, San Diego; Clifford D. Clark, President, State University of New York, Binghamton; George A. Drake, President, Grinnell College; Frank S. Falcone, President, Springfield College; David W. Fraser, President, Swarthmore College; Ulric Haynes, Jr., Acting President, State University of New York, College at Old Westbury; David Lloyd Johnston, President, McGill University; D. Bruce Johnstone, President, State University of New York, College at Buffalo.

David T. McLaughlin, President, Dartmouth College; Percy A. Pierre, President, Prairie View Agricultural and Mechanical College; Albert Somit, President, Southern Illinois University; Clifton R. Wharton, Jr., Chancellor, State University of New York.

[From the New York Times, June 16, 1986]

Sanctions vs. Apartheid

(By Desmond M. Tutu)

A clear message resounds in recent surveys in South Africa in which more than 70 percent of blacks supported sanctions against the Government. Blacks are saying: "We are suffering already. To end it, we will support sanctions, even if we have to take on additional suffering."

Our people have shown they mean business by their use of consumer boycotts. Last year, organizations representing more than 12 million South Africans called for sanctions and economic pressure. These are not insignificant actions or irresponsible bodies or individuals.

I must ask, To whom is the international community willing to listen? To the victims and their spokesmen or to the perpetrators of apartheid and those who benefit from it?

I would be more impressed with those who made no bones about the reason they remain in South Africa and said, honestly, "We are concerned for our profits," instead of the baloney that the businesses are there for our benefit. We don't want you there. Please do us a favor: get out and come back when we have a democratic and just South Africa.

It is true that many foreign corporations in South Africa have introduced improvements for their black staff. They now have a better chance of promotion. They get better salaries. But these improvements have come about largely through the pressures of the disinvestment campaign. American companies, especially, have begun to speak out more forthrightly against apartheid than has been their wont, and they would be the first to admit that they got a considerable jog to their consciences from the disinvestment campaign.

There has been progress, but we do not want apartheid ameliorated or improved. We do not want apartheid made comfortable. We want it dismantled.

You hear people say sanctions don't work. That may be so. But if they don't work, why oppose them so vehemently? If they don't work, why did Margaret Thatcher apply them to Argentina during the Falkland war? Why did the United States apply them to Poland and to Nicaragua? Why was President Reagan so annoyed that his European allies did not want to impose sanctions against Libya? if sanctions are so ineffective, why does the United States still maintain a blockade of Cuba? Yet we have all this wonderful sophistry when it comes to South Africa.

I am unaware of anything that has changed in South Africa without pressure. Changes in the sports policy were due to pressure from the sports boycott and not because there had been a change of heart on the part of white sports administrators.

We hear some say that sanctions will destroy the South Africa economy and leave us with a financial morass. My response is that the ball is surely in the South African Government's court. Its decisions about the future of the country will determine whether sanctions should be invoked or not. I certainly do not want to destroy a land I love passionately. But if the South Africa Government remains intransigent and obstinate, then sanctions or no sanctions the economy will be destroyed in the wake of the violence, bloodshed and chaos that will ensue if a full-scale civil war breaks out.

There is no guarantee that sanctions will topple apartheid, but it is the last nonviolent option left, and it is a risk with a chance. President Reagan's policy of constructive engagement, and similar efforts to persuade white South Africans who support apartheid to change, have failed dismally. Let's try another strategy.

There are those who are not ashamed to argue that if they pull out others will come in to exploit black South Africa. The moral turpitude of that argument is quite breathtaking. We are not asking people to make economic or political decisions. We are asking for a moral decision.

There is no room for neutrality. When you say you are neutral in a situation of injustice and oppression, you have decided to support the unjust status quo. Are you on the side of injustice? Are you on the side of oppression or liberation? Are you on the side of death or of life? Are you on the side of goodness or of evil?

SANCTIONS ARE LAST NONVIOLENT OPTION LEFT

Senator SARBANES. It's a very eloquent statement on this issue. Bishop Tutu, first of all, the assertion that blacks will suffer because of the imposition of economic sanctions. He says:

Blacks are saying we are suffering already. To end it, we will support sanctions even if we have to take on additional suffering. I must ask, to whom is the international community willing to listen? To the victims and their spokesmen or to the perpetrators of apartheid and those who benefit from it?

Later, in the same article addressing the assertion that sanctions don't work, Bishop Tutu says:

You hear people say sanctions don't work. That may be so. But if they don't work, why oppose them so vehemently? If they don't work, why did Margaret Thatcher apply them to Argentina during the Falklands war? Why did the United States apply them to Poland and to Nicaragua? Why was the President so annoyed that

his European allies did not want to impose sanctions against Libya? If sanctions are so ineffective, why does the United States still maintain a blockade of Cuba? Yet we have all this wonderful sophistry when it comes to South Africa.

And finally, he goes on to say:

There is no guarantee that sanctions will topple apartheid, but it is the last nonviolent option left and it is a risk with a chance. President Reagan's policy of constructive engagement and similar efforts to persuade white South Africans who support apartheid to change have failed dismally. Let's try another strategy.

The question I would put to the two witnesses is this: Why isn't the burden of proof on those who want to continue a policy that has proven to be ineffective to justify their policy? In other words, those proposing sanctions are charged with carrying the burden of showing they will work. The fact is that the failure to impose sanctions has not worked and as Bishop Tutu says, "This now is the last nonviolent option left and it is a risk with a chance."

I would appreciate the comments of our two witnesses on that point.

Senator KENNEDY. I think the answer is self-evident. I think the burden should be on those that oppose our proposals on disinvestment or sanctions to demonstrate the effectiveness of continuing their policy of constructive engagement. I don't think that that case can be made. I don't think that one more advisory group to study the situation can add new information to what has already been found. I don't think the appointment of a new ambassador is going to resolve this issue. What we need is not a new ambassador; we need a new policy.

Senator SARBANES. Furthermore, it seems to me that the chairman's question at the outset excluded moral consideration and put the question on a pragmatic basis. That's a reasonable question if we only want to address a piece of the picture, but I fail to understand how the moral dimension can be excluded.

Tutu says in this article, "We are not asking people to make economic or political decisions. We are asking for a moral decision."

There was a great debate in the 1930's over whether economic sanctions should be used against Hitler's Germany. That debate was particularly acute with regard to U.S. participation in the 1936 Olympics held in Berlin.

The question arises whether a U.S. boycott would have brought down Hitler or caused a fundamental change in Nazi policies. In each case, the answer is probably not. But the question, in a sense, is beside the point. I don't know many now, 50 years later, who would seriously argue that the U.S. decision to go ahead and participate was the correct decision. We were confronted with a moral question and we should have responded in moral terms.

I think that's the issue here and I thank our two witnesses for their very eloquent statements.

Senator KENNEDY. I would just mention that the earlier question that the chairman asked, it is a moral issue, No. 1; a political decision; an important economic but not an exclusive economic policy. I don't think anyone would question that if you had divestment immediately that it might work to some advantage for some whites being able to pick up pretty good deals in the short term. But we're talking about a much broader question which I think has been adequately examined in the whole course of our testimony: what do we

believe would be the real significance of such a change or alteration of policy.

Senator SARBANES. The fact is the sanctions might work, so they might have a pragmatic benefit. The failure to impose sanctions has not worked. So on the pragmatics, you're not only even, you've got a chance here with a risk involved. And in any event, the sanction would place us on the right moral side of a very fundamental human rights question.

Thank you, Mr. Chairman.

Senator HEINZ. Thank you, Senator Sarbanes.

Senator Dodd.

Senator DODD. Thank you, Mr. Chairman.

Just to be brief, you've already covered a great deal of ground here this morning. I don't want to go over it. First of all, let me just, if I can, Mr. Chairman, join with you and Senator Sarbanes and Senator Proxmire and others in commending our two colleagues. They have shown great patience and perseverence over the last several years on working on this issue and trying to come up with some answers that would move the South African Government further along.

I would say to them, despite their frustration that they have expressed here this morning, that they ought not to be quite as frustrated as they sound. You've been more successful than I think you're willing to give yourselves credit for.

The fact of the matter is, there has been some change. It hasn't been to the extent or the depth that any of us would like to see, but nonetheless, there has been some change and I think the point that you, Senator Weicker, raised—and Senator Kennedy also joined in on that—is the notion that somehow what we're talking about here—and I would just raise this with you quickly again here—what we're talking about here will have a nominal economic effect short of being joined.

If this legislation were adopted 100 to 0 on the floor of the Senate and 435 to 0 or something like it in the House, signed by the President, in and of itself as far as an economic impact, short of being joined by other countries, as I understood your response to these questions, it is more symbolic—far more symbolic than actually having any economic significance.

Is that a correct assessment in brief?

Senator WEICKER. Yes.

Senator DODD. Do you agree with that, Senator Kennedy?

Senator KENNEDY. Well, I don't quite agree with that.

Senator WEICKER. Well, let me restate it. In my statement, as I said, if we do this, I think we are going to be joined. So I think at that stage of the game you're going to have a very effective impact.

SURVEY WOULD SHOW A CONFUSED PUBLIC OPINION

Senator DODD. Let me just go a bit of a step further with you. It seems to me here I think if you did a survey in the country right now and said, "What is the United States doing in South Africa based on news reports," my suspicions would be that most people would say we've got all sorts of economic sanctions in place; the

Congress has passed a number of laws; the President has done a number of things, spoken out and so forth.

I get the feeling that there's a great deal of confusion as to the extent that we've actually done a lot already in the minds of many people and it gets somewhat clouded. In fact, today, whether we pass this legislation or not, the business climate in South Africa is absolutely devastated. I can't imagine an American corporation today deciding to invest or to start any new operations in South Africa given the present climate there. I don't think either of you would disagree with that either, regardless of what we do here.

It seems to me we've reached a point where governmental action of some kind is necessary--direct governmental action. What we're trying to do here, it seems to me, is to discourage the private sector from doing things or prohibit the private sector from doing things, or private citizens from doing things. We're confronted with the unique opportunity in that the administration has decided in the last several days apparently to name a new ambassador to South Africa and that nomination of either Mr. Brown if he in fact turns out to be the nominee or someone else will be coming before the Congress.

Wouldn't it be a more dramatic, more clear, more direct message, if you will, a more significant symbolic gesture, if you will, for the United States at this particular juncture, given the fact the private sector climate has been pretty much poisoned anyway, for us to either hold up that nomination in the Congress to stop it from going forward, getting a strong vote in the Senate on that particular issue, than it would be to add to things that already may be a bit confusing to people not only in this country but elsewhere?

Senator WEICKER. Respectfully, Senator, I would have to disagree. As I have indicated, I think diplomatic relations are something separate and apart and I think they have to continue.

I think Senator Kennedy phrased it well. It's not a question of whether we need a new ambassador; we need a new policy.

Senator DODD. What better way to get their attention.

Senator WEICKER. And it's an easy way out for the Congress. That's what bothers me. The Congress has not acted. The House finally electrified, very frankly, the world when they passed the Dellums bill. Now the time has come for us to act, not let this thing drift away in the sense of an election sermon but to act decisively. That is the greatest message because we're representative, supposedly, of the 250 million people of this Nation.

Now again there, so I don't sit there and put this all on our head, I think it's time the Nation did speak on this issue. We have all these concerts for one cause after another. What greater cause than the plight of these people in South Africa? And if the people of the United States want this problem resolved, it will be resolved by the President and the Congress. But right now, as you've indicated, they possibly are somewhat confused as to what the situation is all about, although it's not a very confusing situation. It's a very stark situation in terms of the life and death aspects of it.

But no, I don't think—I'm not concerned as to who the Ambassador is going to be or not be. That's up to the President with the proper qualifications obviously, and I don't want to feel we're going to hang our hat on that peg. I want something definitively in the

terms of the proposal of this legislation or the Dellums legislation and some of it is going to mean sacrifice insofar as the United States is concerned. But I think that's the proper way to go. Otherwise, in effect, we have not addressed the issue when we have the responsibility along with the President of dictating the directions of this Nation.

INVESTMENTS OF $2 BILLION AND $4 BILLION IN LOANS

Senator KENNEDY. I would just mention one other aspect about the trading. We talked a little bit about it earlier in the first question. As the Senator knows, we have $2 billion of investment, $4 billion in loans, we're the second foreign investor in South Africa. We're the No. 2 trading partner.

So although, as I mentioned earlier, with the divestment legislation as has been pointed out, it has both the moral and political and less in terms of the economic, but I still believe it has important economic impact in and of itself.

But I would agree with the general tenor of all of those in the committee that its real impact would be from an international cooperation and support. But I'm not quite as quick to dismiss what its own impact would be in terms of the South African situation and I finally believe, as I mentioned earlier, that the day it passed I think we would have Nelson Mendela on his way home.

Senator DODD. Well, I don't disagree about the diplomatic approach because obviously there are a number of other nations around the world where you could apply a similar standard, I suppose, if issues came up and you don't want to start a process like that, it seems to me. But nonetheless, I'm just concerned in some ways that we've kind of—I don't have any question at all that the pressure economically that has been created as a result of legislation, the introduction of legislation and so forth here, has really moved things. I don't have any doubt in my own mind that the Pass laws, that the prohibition on mixed marriages—the changes in that have occurred not because the Botha government or the white minority government of that country has all of a sudden had a conversion on the road to Damascus. I happen to believe they have done it because they have been pressured. There's no question. There shouldn't be any doubt in anyone's mind.

My concern is that we've kind of bottomed out a bit in our ability to pressure that, and once you get on a path, it seems to me we sort of stay in a path. I don't have a quick alternative. I raised the Ambassador question. I'm not suggesting I would even support that, but I'm seeking some other way to kind of get some pressure on the situation so that you create a different dynamic that would move this thing further.

My fear is that I'm not convinced we're necessarily going to get other countries to join us and this may not have the same kind of impact that I think earlier decisions have had.

Nonetheless, I commend both my colleagues. I don't know any other alternative but what you've suggested and I sense, in a sense, your own frustration a bit in trying to seek that button that is going to change the situation.

Mr. Chairman, I thank the two witnesses and thank you.

Senator HEINZ. Senator Dodd, thank you very much.

Senator Riegle.

Senator RIEGLE. Thank you, Mr. Chairman.

I want to thank my colleagues. We have two committees running simultaneously this morning which is the way the Senate always works, but I have had a chance to review their statements. I appreciate very much what they have said to us.

I think we have to move on the South Africa problem now. We are not getting the leadership that we ought to get out of the executive branch of Government. It seems to me that we have to act here at the legislative level. I'm hopeful we can do so and I thank my colleagues for their leadership.

MOVE THE SANCTIONS BILLS QUICKLY

Senator WEICKER. Mr. Chairman, I'd like to say one thing because I think it's important. Senator Kennedy can speak for himself, although we've talked these matters over at length prior to this last recess. And you set the stage for my remarks by indicating there are three different committees and three different bills.

If anybody thinks this is going to stall the process in the sense of the time required for three different committees to act on three different bills, I think they'd better rethink what's going to happen. Because, very frankly, it is fully my intention and I believe those of us that have been involved, to bring this matter one way or the other to the attention of the Senate certainly within the next 2 weeks—at the latest, 3 weeks. We are not going to sit around here and go through a process when indeed that process is intended to stall any decision or the finality of that decision—I'm talking about the entire constitutional process—until Congress adjourns for the elections.

This is a matter that should be on the President's desk in sufficient time so that if the President disagrees with it it can come back to the Congress and that means acting now one way or the other.

Senator KENNEDY. And I would just underscore that. That's certainly been the position that has been taken by Senator Cranston and it's been my position as well. It's an issue that has been studied to death. It's not a new issue to the membership and it seems to me that the membership ought to be able to make a decision on it now. I have joined with both Senators Weicker and Cranston and others to insist that we get a vote on this issue prior to the August recess.

Senator HEINZ. Gentlemen, you've been very helpful, but there's one other area I want to pursue very briefly with you and it has to do with what you might call the policy goals explicitly set forth as you did in your most recent legislation.

TWO ALTERNATIVES FOR REMOVAL OF SANCTIONS

S. 2570, the Dellums-Cranston bill, as you know, does not have any specific target for the South Africans to aim at in the way you have in your legislation. In your legislation, you have one of two alternatives that the South African Government can satisfy

through a mechanism in order to have some prospect of limiting the burden of sanctions.

One is the freeing of Nelson Mandela and political prisoners and entering into negotiations. The other is dismantling apartheid.

Is it important to retain those goals in the legislation?

Senator KENNEDY. Let me say, Mr. Chairman, I strongly support the House action now. I think the time to take that action is now and I'm firmly convinced, as I've stated earlier in the testimony, that with that legislation passing, the President signing, that we will achieve what might have been achieved in the legislation introduced by Senator Weicker and myself, in May.

Once that process is going in a constructive and positive and realistic way, then we can come back and review the situation.

Senator HEINZ. I'm not quite clear what you mean. Are you saying we should pass legislation now?

Senator KENNEDY. I say that we ought to pass a disinvestment law now. If we do, I think we will achieve as much as can be hoped to be achieved in terms of political change. I believe that you will get significant political change the day that that is signed. I believe that you will see the freedom of Nelson Mandela, and you will begin a real political process there, and there will finally be a recognition by the South African Government that it must open links with the ANC. Passing this legislation will produce the other meaningful steps that will move that country toward a whole political process and system which recognizes majority rule with minority rights.

I, for one, have never been one to suggest or recommend how that is best going to be achieved. I think that is not our role. That process has to be worked out by the people in South Africa—black, white, Indian and other groups in South Africa. But what we can do is indicate through our action our moral, political, and to the extent that we can, our economic policy.

Senator WEICKER. The bill that you have before you we introduced before you 1 year ago and it gave 1 year for these things to take place. They have not taken place. The year is up. The answer is yes, that's why I join with Senator Kennedy in supporting the House bill.

Senator HEINZ. Well, S. 2498 you introduced within the last 2 months.

Senator WEICKER. I understand, but the point to be made is——

Senator KENNEDY. Prior to the state of emergency which is the major new event that has taken place. This has been an escalating, continuing process and we're at the state now where we believe this is by far the best approach.

Senator HEINZ. Let me ask you the bottom line question and your answer will be significant no so much for the fate of any legislation but for the understanding of both the administration and the American people at what point the events have arrived in South Africa.

The question is: Have we reached the point at which peaceful change of the kind that we all seek is no longer possible in South Africa, or is peaceful change still possible?

Senator WEICKER. I think that's a very close question asked this year and I think you're within months of going over the mark to where it's not possible. I think we're at the very end of the possibility of achieving peaceful change and I suppose what concerns me, obviously the lives that would be lost, black and white, in the absence of peaceful change, but also, if anybody in the United States thinks that we're going to get away scot free and that we're going to be able to stand aside from the holocaust that's going to occur, forget it. Obviously, we're not going to stand aside from the kind of bloodshed that is imminent, absent peaceful change. That's why the urgency of this legislation now. That's why Senator Kennedy and I say that we should have these strictest of sanctions imposed now. It is the last chance and I don't know whether it's weeks or months, but it isn't much farther away in the sense of losing any opportunity to achieve that peaceful change.

Senator HEINZ. Senator Kennedy, does that reflect your assessment as well?

Senator KENNEDY. I would certainly agree. This is the last chance. Those that are concerned about the economic conditions in South Africa, they are already deteriorating rapidly—without any kind of sanctions. You hear dire predictions about the effects of economic sanctions, but that country, without sanctions, is already headed for massive civil war with a level of bloodshed that cannot be imagined. This legislation represents the last nonviolent step left.

The moderate political leadership for the most part has been arrested. Many more of the leaders have left and gone outside of the country. Still that pulsating, everyday violence continues. It's an explosion. It's an absolute explosion. And anyone that thinks the time is on the side of orderly, gradual charge does not appreciate those emotions and feelings, has not read history and certainly does not understand South Africa.

Senator HEINZ. Well, it is this Senator's view that your assessment that you've just given as to the critical nature of the timing could very well be correct. I'm convinced that there are a supermajority of Senators for the enactment of legislation and what happened last year when legislation that we hammered out with your help, Senator Kennedy, and with your help, Senator Weicker, with the House, and which we passed overwhelmingly in the Senate but which was vetoed by the President and fell three votes short of enactment, that legislation will pass and it will have all the votes it needs, including the 60 votes to get to final passage over a lengthy discussion or even two-thirds vote over a Presidential veto. This is likely to be the inevitable course of legislative action in this Congress.

Senator KENNEDY. Mr. Chairman, all I can say is I'm not a good predictor of the President's action, but I dare say that when this bill passes overwhelmingly, as it did in the House of Representatives, I believe we will have the President's signature on it.

Senator HEINZ. Let me put in the record at this point the opening statement of Senator Dixon at the appropriate point in the record.

[The following was received for the record:]

STATEMENT OF SENATOR ALAN J. DIXON

Mr. Chairman, I am pleased to be here today as the International Finance Subcommittee considers legislation to promote the dismantling of apartheid in South Africa.

President Reagan's policy of constructive engagement has failed and therefore must be abandoned. Congress came to this realization last year when both the House and the Senate, by strong bipartisan majorities, passed sanctions legislation. Unfortunately, that legislation was never enacted. Since that time, however, the House has passed a new, much stronger, bill, and new legislation is now pending before this committee.

My position on anti-apartheid is clear and consistent; I believe it must be ended. For that reason, I supported last year's sanctions legislation, even though I generally believe that trade sanctions are overused and most often do not represent sound public policy. I also voted for cloture, in an attempt to ensure that the final legislation cleared the Senate, because I felt that the administration's actions were too weak to have any real impact.

I am sorry to say that events seem to have demonstrated the correctness of that judgment. The situation in South Africa continues to deteriorate. Thus, it is time to take further action to distance ourselves from a regime that resorts to violence and repression in an effort to maintain itself in power.

Economic sanctions, though, are not without cost. They will hurt businesses in the United States, and could result in layoffs here, as well as in South Africa. If South Africa retaliates, poor black African countries along its border could be seriously hurt, at a time when they are already facing severe economic problems.

Further, unless sanctions are kept on for a very long time, they will likely be not much more than an inconvenience to South Africa itself. Sanctions, particularly if imposed solely by the United States without the cooperation of our allies, will not by themselves cause South Africa to abandon apartheid.

It is nonetheless essential for us to take further action because this Government will not last in the long run. It will either be replaced by whites more willing to end apartheid, or by a majority black government. In either case, long-run American influence will likely be maximized in the future if we distance ourselves from the current disaster in the making. Sanctions, therefore, not only express our moral revulsion over apartheid, they also represent a sound, hard-headed view of long-term American interests in the region.

I strongly believe the United States must make clear to the world, to South Africa's neighbors, and to the black majority in South Africa itself, that it is against this institutionalized system of racial discrimination and subjugation. I look forward to working with my colleagues to ensure that the Senate adopts an effective legislative package that leaves no doubt where the United States stands on the question of apartheid.

Senator HEINZ. I would ask if my colleagues have any further questions.

Senator SARBANES. Mr. Chairman, I just want to underscore what Senators Weicker and Kennedy said about the urgency of acting in the time period between now and the next recess; in other words, in the next few weeks as Senator Weicker indicated.

For that reason, I commend you for holding these hearings promptly upon the return of the Congress from the Fourth of July recess. You scheduled them at the first opportune time and I think that's an important contribution to the discussion of this issue.

As Senator Weicker noted, the House bill has been held at the desk so it's available at some point for Senate action. I think the committees have a reasonable period of time ahead of them in which to consider the issue, frame legislation, and bring it to the floor of the Senate, but I think it's imperative that the Senate face this question and act on it in the current legislative period before the next recess. This will permit sufficient time to complete all leg-

islative action, send the matter to the President, and address the issue thereafter if that should be necessary.

Senator WEICKER. In following up on Paul's remarks, I want to thank Senator Heinz for first, last year to afford us a forum and again in a timely fashion this year. It is deeply appreciated. That has now become maybe a more popular attitude in the Senate. The fact is that Senator Heinz led the way on these matters as to having a hearing before the public.

POSSIBLE MARKUP

Senator DODD. Mr. Chairman, have you spoken with the full committee chairman at all? Is there a program that we could talk about this morning at all in terms of when a markup might occur?

Senator HEINZ. I can't speak for the chairman on that, Senator Dodd, I don't know. I know that he wants us to have hearings as rapidly as possible.

Senator DODD. Have you made a request at all for a markup?

Senator HEINZ. If you can tell me when we're going to do the banking markup on bank powers, I might be able to——

Senator DODD. Maybe you're not the right guy to ask.

Senator SARBANES. Well, the Foreign Relations Committee, of course—Mr. Chairman, I just might note for the information of those here, the Foreign Relations Committee will open hearings 1 week from today and has scheduled 3 successive days of hearings on this issue and there is some legislation that's been referred to that committee which is, of course, then amendable. So the forums are there to address the issue and I agree with the two Senators at the desk, one way or another, it's going to have to be addressed in the immediate future.

Senator HEINZ. Senators Sarbanes, Kennedy, at the outset I think made the accurate appraisal, which is that having three committees charged with responsibility for looking into this and taking action is in fact an advantage for Senate action. It will better educate our colleagues on an issue that perhaps some have wondered what the best solution is. It's been problematic over the years. Even the legislation that's before us today as endorsed by Senators Weicker and Kennedy is different than it was 2 months ago with the bill they introduced.

So I think the multiple committee focus is healthy, good, and is likely to result in a stronger, more effective legislative product.

Senator SARBANES. Particularly when it's undergirded and supported by the very strong view of the two Senators testifying today that the issue will be put before the Senate in a reasonable period of time for decisionmaking.

Senator HEINZ. I want to thank Senators Kennedy and Weicker—they did an outstanding job last year—but gentlemen, you really have surpassed yourselves. You've been very, very fine witnesses.

Senator KENNEDY. We appreciate the attention of the committee. You've given us a great deal of time to be able to develop these thoughts and we are very grateful to you.

Senator HEINZ. Thank you.

Would our next panel of witnesses please come forward: Mr. John van Eck, Mr. David Hauck, Mr. W. Clark McFadden II. Gentlemen, would you please take your places.

Mr. van Eck, please proceed.

STATEMENT OF JOHN van ECK, PRESIDENT, INTERNATIONAL INVESTORS, INC., NEW YORK

Mr. VAN ECK. Mr. Chairman, I respectfully request that you include the following statement in the record of the hearings on S. 2498, 99th Congress, a bill to prohibit investment in South Africa.

As a response to Senator Garn's letter, I have amended the original statement which I sent in last week, and I would like to request that I have your permission to include the amended statement.

Senator HEINZ. Without objection, so ordered.

Mr. VAN ECK. Thank you, sir.

I am chairman and president of International Investors Inc., an American mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940, with some 150,000 stockholders residing in 50 States and the District of Columbia, and about $700 million of investments primarily in marketable securities. Our company concentrates its investments in shares of gold mining companies, and holds substantial investments in shares of South African gold mining companies. There are also many additional American stockholders, perhaps as many as 1 million, who own $2 billion or more of South African gold mining shares either directly or through other investment companies. There are 22 gold-oriented mutual funds with total assets amounting to $1.8 billion as of March 31, 1986.

On behalf of our shareholders and Americans similarly situated, I wish to express strong opposition to S. 2498 and other similar bills.

SANCTIONS WILL DAMAGE AMERICAN SHAREHOLDERS

Depriving our company and its shareholders and other Americans similarly situated of the right to hold shares of South African gold mining companies which are traded in the over-the-counter markets in the United States and on securities exchanges in a number of free world countries will have no effect on the Government of South Africa, but would be grossly damaging to the interests of our company and its shareholders and all other Americans similarly situated. It would be an intolerable interference with the free markets which exist in the free world, and be highly prejudicial to American investors as compared with their counterparts in Europe, Japan, and other free world countries which would not be subject to these restrictions. It would be an outrageous intrusion on personal liberty.

Since South Africa reimposed exchange controls in September 1985, there is no way that an American purchasing South African securities from other Americans or from Europeans could contribute to the inflow of capital into South Africa. All that such investors in South African securities would be doing would be trading among themselves. They are not supporting so-called apartheid.

American investors have already suffered a substantial loss due to the fact that such securities are traded at the financial rand rate of exchange which sells at about 40 percent discount from the commercial rate.

If this bill is passed, the financial rand rate of exchange would be substantially further depressed, and the loss to Americans could run into billions of dollars. Foreign investors would profit by this amount. This action, in my judgment, would have no effect on the South African Government or economy. In addition, the loss of the revenue to the Treasury would amount to $200 to $300 million due to the loss of taxable dividend income. There would be a further reduction of Treasury revenue as capital losses would offset other capital gains.

Accordingly, whatever action your committee may take to condemn apartheid, I urge that your committee not act favorably on S. 2498, or, at the very least, that it amend the bill to permit investment by United States investors in shares of South African enterprises which are traded in the over-the-counter markets in the United States as well as on registered national exchanges, or are publicly traded in other free world countries.

SUPPORT EVOLUTIONARY STEPS TOWARD SHARING POLITICAL POWER

In addition, I wish to take this opportunity of urging your committee to support the United States administration's policy of contributing to a peaceful, constructive, political transition in South Africa and to support American corporations whose operations provide employment for blacks, and many of which have taken leadership in providing equal conditions for employees of all races. May I suggest that each member of your committee make allowance for South Africa's complex sociopolitical situation, give credit to the liberalization and reforms that have already been and are being achieved, and support evolutionary steps toward sharing of political power by all races which will provide the best hope for the future of South Africa. To impose economic sanctions now, in my judgment, would contribute to more violence by the radical black elements against the moderates of their own race who support economic advancement and negotiated political change. It would encourage confrontation rather than conciliation. Punitive measures would be counterproductive as they would further consolidate the present regime and not collapse it. Let us make this a better world to live in. Thank you, Mr. Chairman.

[The complete prepared statement follows:]

STATEMENT OF JOHN C. VAN ECK, CHAIRMAN AND PRESIDENT,
INTERNATIONAL INVESTORS INC., JULY 15, 1986
BEFORE THE SUBCOMMITTEE ON INTERNATIONAL FINANCE &
MONETARY POLICY OF THE SENATE COMMITTEE ON
BANKING, HOUSING AND URBAN AFFAIRS

Mr. Chairman,

I respectfully request that you include the following statement in the record of the hearings on S. 2498, 99th Congress, a bill "to prohibit investment in South Africa."

I am Chairman and President of International Investors Incorporated, an American mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940, with some 150,000 stockholders residing in fifty states and the District of Columbia, and about $700 million of investments primarily in marketable securities. Our company concentrates its investments in shares of gold mining companies, and holds substantial investments in shares of South African gold mining companies. There are also many additional American stockholders, perhaps as many as one million, who own possibly $4 billion or more of South African gold mining shares either directly or through other investment companies.

On behalf of our shareholders and Americans similarly situated, I wish to express strong opposition to S. 2498.

Depriving our company and its shareholders and other Americans similarly situated of the right to hold shares of South African gold mining companies which are traded on over-the-counter markets in the United States and on securities exchanges in a number of free world countries will have no effect on the government of South Africa, but would be grossly damaging to the interests of our company and its shareholders, and all other Americans similarly situated. It would be an intolerable interference with the free markets which exist in the free world, and be highly prejudicial to American investors as compared with their counterparts in Europe and Japan and other free world countries which would not be subject to these restrictions.

Since South Africa reimposed exchange controls in September 1985, there is no way that an American purchasing South African securities from other Americans or from Europeans could contribute to the inflow of capital into South Africa. All that such investors in South African securities would be doing would be trading among themselves. They are not supporting so-called apartheid. American investors have already suffered a substantial loss due to the fact that such securities are traded at the Financial Rand rate of exchange which sells at about a 40% discount from the commercial rate.

Accordingly, whatever action your Committee may take to condemn apartheid, I urge that your Committee not act favorably on S. 2498, or, at the very least, that it amend the bill to permit investment by United States investors in shares of South African enterprises which are traded in the over-the-counter markets in the United States as well as on registered national exchanges, or are publicly traded in other free world countries.

In addition, I wish to take this opportunity of urging your Committee to support the U.S. Administration's policy of contributing to a peaceful, constructive, political transition in South Africa and to support American corporations whose operations provide employment for blacks, and many of which have taken leadership in providing equal conditions for employees of all races. May I suggest that each member of your Committee make allowance for South Africa's complex sociopolitical situation, give credit to the liberalization and reforms that have already been and are being achieved and support evolutionary steps toward sharing of political power by all races which will provide the best hope for the future of South Africa. To impose economic sanctions now, in my judgement, would contribute to more violence by the radical black elements against the moderates of their own race who support economic advancement and negotiated political change. It would encourage confrontation rather than conciliation. Let us make this a better world to live in.

Respectfully submitted,

John C. van Eck

Senator HEINZ. Thank you, Mr. van Eck.
Mr. Hauck.

STATEMENT OF DAVID HAUCK, DIRECTOR, SOUTH AFRICA REVIEW SERVICE INVESTOR RESPONSIBILITY RESEARCH CENTER, INC., WASHINGTON, DC

Mr. HAUCK. Mr. Chairman and other committee members, I am pleased to testify today on S. 2498 and more specifically on the potential impact on South Africa of restrictions on United States investment and bank lending to that country.

Before I do that, I would like to explain very briefly the Investor Responsibility Research Center that I work for and what we do. We were founded in 1972 by a group of institutional investors, to provide them with information on public policy issues involving U.S. corporations. From the beginning South Africa and the role of United States companies in that country have been a predominant issue. At this point, nearly 300 institutional investors, including universities, pension funds, investment management firms, banks and insurance companies, use our research to assist them in developing their investment guidelines. Many of our subscribers have adopted total divestment policies. Others have resisted adopting total divestment policies or partial divestment. Our job, though, is to provide them with the information that they need for whichever policy they develop.

We do not receive funding from United States companies that have operations in South Africa, but the majority of our funding does come from shareholders who hold shares in those companies.

I was asked to focus on the rather narrow and perhaps technical aspects of what would happen if there were restrictions on new investments by United States companies in South Africa, if there were restrictions on United States bank lending to both public and private sector borrowers in South Africa, and finally I'm also going to look briefly at one clause in the Dellums-Weicker-Kennedy bill calling for United States companies to pull out of South Africa.

UNITED STATES COMPANIES ARE SECOND LARGEST INVESTORS IN SOUTH AFRICA

As was noted by Senator Kennedy, United States-based companies are the second largest investors in South Africa, following the British. As of May of this year, 266 U.S. firms had direct investments in that country. But in recent years there's been an unmistakable trend for United States companies to pull out of South Africa rather than to invest in that country.

As the appendix to my testimony shows, 7 United States companies pulled out in 1984, 39 pulled out of South Africa in 1985, and in the first 5 months of 1986, 15 more companies have pulled out.

In general, however, the companies that have pulled out have been small operations, sales operations, not manufacturing, and as a result, the amount of their investments and the size of the investments pulled out have been relatively small.

Direct investment in South Africa by United States firms therefore, has declined only marginally since 1982. Although I'm sure many of you are familiar with United States Commerce Depart-

ment numbers which indicate that United States direct investment has actually fallen by $1 billion in the last 3 years, from $2.3 billion at the end of 1982 to $1.3 billion at the end of 1985, it is important to note that the principal cause of this dollar drop was the sharp decline in the value of the South African rand against the dollar.

However, when one removes the impact of the weakening rand, we find that U.S. direct investment has declined by only $50 million since 1982. In table 1 of my prepared testimony the line labeled "Direct Investment Minus Cumulative Capital Gains and Losses" shows this number.

Because S. 2498 would prohibit investment by United States parent companies in their South African subsidiaries, it is important to note the extent of such new investment in recent years. Again looking at table 1 of the prepared testimony and the items labeled "Intercompany Debt Flow" and "Equity Capital Flow," one finds that in fact in the 3 years from 1982 to the end of 1985 there was a net capital flow of $14 million from South Africa to the United States parents rather than the reverse. In fact, in the last year for which we have data, 1985, the net capital flow from South African subsidiaries to their United States parents came to $17 million. It's hardly surprising, given the testimony we've heard this morning, concerning developments in South Africa, that United States companies are taking money out of their subsidiaries rather than putting it in.

I would also like to add that if legislation was to pass restricting the flow of capital, the South African Government is very likely to block this flow from South Africa to the United States, with the result that one might actually find the pool of investment capital in South Africa growing after sanctions rather shrinking.

Turning now to the question of withdrawal of United States companies from South Africa as proposed in S. 2570, once again, one finds that the sanctions proposed would have little direct impact on the South African economy, despite the fact that United States direct investment was worth some $1.3 billion at the end of 1985.

SOUTH AFRICA'S TWO EXCHANGE RATES

This may seem surprising, but the reason for this is that Pretoria has reintroduced exchange controls as of September 1, 1985. South Africa now has two exchange rates. One is called the commercial rand and this is what's used for foreign trade dealings, when tourists go to South Africa, and for the payment of dividends to foreign owners of stock in South African companies. The second and the more important one for S. 2570 is the financial rand rate.

This is used when a foreigner sells an asset in South Africa and then exchanges the rands he receives for the sale for dollars.

When an American firm sells its assets to a South African company, the proceeds from the sale go into a financial rand pool. Non-South Africans wishing to invest in South Africa can purchase rand from that financial rand pool. When the supply of financial rand exceeds the demand—in other words, when more foreign investors are pulling out of South Africa than coming in—the value of the financial rand falls until a balance between supply and

demand is reached. Theoretically, if no foreigners wanted to invest in South Africa or were permitted to invest in South Africa, the value of the financial rand would fall to zero.

From the South African's Government viewpoint, the financial rand protects the economy from the impact of capital flight. Because of the financial rand system, South Africa would experience no net loss of capital even if all United States companies pulled out and, as a result, the size of the South African economy would not be reduced.

This discussion assumes that United States firms will obey South Africa's exchange control laws. But given that the gap between the commercial rand and financial rand is already 40 percent and that that gap would no doubt widen to an even more punitive level, companies will be under extreme pressure to find ways to evade the exchange laws of South Africa. One relatively easy path for them to do so is to sell their assets to a South African firm and then enter a licensing agreement with that firm. It's interesting to note that of the 55 companies that have pulled out of South Africa since 1984, at least a third of them have entered into such licensing agreements.

LICENSING AGREEMENTS

The licensing agreement would have a overt part where the South African companies would pay the United States company for the use of its technology, the use of its manufacturing processes, and then a disguised payment which would essentially pay the United States company for the assets that the South African company purchased.

These payments under licensing agreements at the present time are made under the higher commercial rand rate.

Licensing agreements also are important because to the extent that the South African economy depends on Western technology such agreement permits South Africa continued access to foreign technology, even after all foreign firms have pulled out of the country.

Turning to the question of United States bank loans to South Africa, S. 2498 would prohibit new loans by United States banks to all public and private sector borrowers in South Africa. By adding private sector borrowers the bill goes beyond President Reagan's Executive order of September 1985 which effectively banned new loans to the South African Government and other public sector agencies.

If passed, this legislation would legally mandate what the United States banking community is already doing in response to political and economic developments in South Africa and in response to Pretoria's decision on September 1, 1985, to suspend the repayment of foreign loans owed by South African private sector borrowers.

In table 2 of my testimony it shows that the value of United States bank loans to all South African borrowers has dropped steadily since September 1984. From a high point of $5 billion in September 1984, United States banks reduced their exposure by more than $1.5 billion before Pretoria declared a debt moratorium in September 1985. In the 3 months following Pretoria's declara-

tion of a debt moratorium and President Reagan's Executive order, United States banks reduced the value of their South African loans by an additional $200 million. So at the end of 1985, the most recent period for which we have figures, United States loans to South Africa stood at $3.2 billion.

Even without sanctions legislation, few United States banks are likely to lend to the South African private sector as long as the debt moratorium stays in place and South Africa's political unrest continues. Moreover, even before President Reagan's Executive order, United States banks were reducing their loans to the South African public sector.

As I have attempted to show in my remarks this morning, two of the South African sanctions included in S. 2498—no new investment by United States companies and no new loans by United States banks—would essentially mandate what the United States business community is already doing based on its objective assessment of the current risks associated with doing business in South Africa. The legislation would have an impact, however, if the situation in South Africa should change and companies and banks, in the absence of legislation, would be tempted to increase their investments in that country.

Requiring United States companies to sell their South African assets, as proposed in S. 2570, would not have a direct impact on the South African economy as long as the financial rand system stays in place and United States firms are permitted to share their technology with the South Africans through licensing agreements.

NEED OF FOREIGN INVESTMENT

This does not mean that the South African economy can do without foreign investment and loans. In fact, it desperately needs foreign capital if the economy is to grow at a rate sufficient to provide jobs to keep the unemployment rate among blacks from growing. The lack of new foreign investment in recent years has been a major contributor to negative rates of economic growth in South Africa. But what the evidence shows is that even in the face of what one might call voluntary sanctions on the part of United States companies and banks during the last 2 years, the South African Government has opted to remain intransigent on the question of political rights for blacks. Much as one might hope otherwise, I see little reason to believe that making these particular voluntary sanctions mandatory will alter Pretoria's actions. Nor will these sanctions measurably add to the economic distress that South Africa is already experiencing, although as I noted earlier passage of this bill would ensure that any temporary respite in the political unrest or a successful rescheduling of South Africa's debt would not be met with a resumption of United States investment.

To conclude, these observations do not mean that sanctions won't work or that there is nothing the West can do. I believe that agreement among South Africa's major trading partners—the United States, England, West Germany, and Japan—to implement and rigorously enforce prohibitions on the export of high technology goods to South Africa could, over a period of time, undermine that country's economy, motivate South African businessmen to press vigor-

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ously for political change, buoy the spirits of most in the black opposition and possibly lead to a less violent transition from minority to majority rule.

Another action that the United States could take would be to improve ties with the African National Congress and other major black opposition groups. I believe that this would contribute to a more rapid solution to South Africa's political deadlock by giving these groups greater credibility among whites in that country and by increasing the now perilously low credibility of the Western nations in the eyes of black South Africans. S. 2498's proposal to authorize $4 million for refugee education assistance would be a step in this direction since the African National Congress is involved in most, if not all, South African refugee education projects.

Thank you for the opportunity to testify and I ask that the prepared testimony and tables be included in the record.

[The complete prepared statement follows:]

TESTIMONY BY DAVID HAUCK, DIRECTOR OF THE SOUTH AFRICA REVIEW SERVICE OF THE INVESTOR RESPONSIBILITY RESEARCH CENTER

Before the Senate Committee on Banking, Housing and Urban Affairs

July 15, 1986

Mr. Chairmen and committee members, I am pleased to testify today on S.2498 and more specifically on the potential impact on South Africa of restrictions on U.S. investment and bank lending to that country.

The Investor Responsibility Research Center was founded in 1972 by institutional investors to provide impartial reporting and analysis on public policy issues involving U.S. corporations. From the beginning, South Africa, and the role and impact of American firms with operations there, has been a major focus of our research. Nearly 300 institutional investors--universities, pension funds, investment management firms, banks and insurance companies--use IRRC's research to assist them in developing and implementing shareholder voting and investment guidelines related to the question of U.S. investment in South Africa.

I have made seven research trips to South Africa since 1979, spending a total of more than 12 months there. Last month I returned from my most recent visit to South Africa.

All of us are aware of the disturbing developments of the last two years in South Africa. In response to increasing black resistance to apartheid, the South African government has declared states of emergency on two occasions; dramatically, and ominously, expanded the powers of the police and military; detained thousands of its opponents without charge and without access to their families and legal counsel; and, most recently, instituted draconian controls over the ability of the press to report on events in that country. The internal opposition has not been silenced by these actions. Massive work stayaways occurred on May Day and on June 16, the tenth anniversary of the demonstrations in Soweto. The exiled African National Congress has continued its low-level campaign of sabotage against the transport system and government offices. In the last three weeks, however, the ANC appears to have changed its strategy to include random bombing attacks on "soft" civilian targets.

Bishop Desmond Tutu, the African National Congress and the Commonwealth Eminent Persons Group have recommended economic and other sanctions in the hope these will prod the South African government to transfer political power to the black majority and will stop the continuing downward spiral into further state repression and political violence.

S.2498 calls for several types of sanctions against South Africa. In my remarks this morning, I will focus on the likely impact of a ban on new investment by U.S. parent companies in their South African affiliates and a prohibition on new bank loans to any South African borrower. I will also briefly examine the potential effect of the provision of a second bill, S.2570 proposing that all U.S. investment be pulled out of South Africa.

My prepared remarks will not address other proposals in S.2498 such as those prohibiting the import of South African coal, uranium and steel, ending South African Airways' landing rights in the United States and restricting South Africa's access to U.S. computer technology.

No new investment by U.S. parents in South African affiliates

U.S.-based companies are the second largest investors in South Africa after the British. As of the end of May 1986, 266 U.S. firms had direct investments in South Africa . In recent years, the unmistakable trend has been for U.S. companies to pull out of South Africa rather than invest in that country for the first time. Seven companies pulled out in 1984, 39 pulled out in 1985 and, in the first five months of 1986, 15 companies pulled out. (See Appendix 1 of my testimony for a list of the firms pulling out.) To the best of IRRC's knowledge, no U.S. firms have entered South Africa since the end of 1983.

In general, companies that have withdrawn have had sales but not manufacturing operations in South Africa. As a result, they had relatively little invested in South Africa, and their withdrawal had little impact on the overall value of U.S. investments in that country.

Direct investment in South Africa by U.S. firms has declined only marginally since 1982. Although the U.S. Commerce Department's figures show that U.S. direct investment fell by nearly a billion dollars in the last three years, from $2.28 billion at the end of 1982 to $1.35 billion at the end of 1985, it is important to note that the principal cause of this drop was the sharp decline in the value of the South African rand against the dollar. (See Table 1.) As a result, the value of rand-denominated investments in South Africa were worth much less in dollar terms at the end of 1985 than they had been three years earlier. When one removes the impact of the weakening rand, we find that U.S. direct investment has declined by only $50 million since 1982. (See line labeled "Direct Investment-Cumulative Capital Gains and Losses" in Table 1.)

Because S.2498 would prohibit investment by U.S. parent companies in their South African subsidiaries, it is important to note the extent of such investment in recent years. Again referring to Table 1 and the items labeled "Intercompany Debt Flow" and "Equity Capital Flow," one finds that from 1982 to 1985 there was a net capital flow of $14 million from the South African subsidiaries to the U.S. parents rather than the reverse. In 1985, the net capital flow from South African subsidiaries to the U.S. parents came to $17 million. It is hardly surprising that U.S. firms are taking money out of their South African subsidiaries rather than putting it in, given the degree of political unrest in South Africa and the poor state of its economy, but it underscores the fact that a ban on new U.S. investment is not likely to have an impact on the South African economy. In addition, the South African government is likely to block this flow of capital from South Africa to the United States if sanctions are applied, with the result that the pool of investment capital in South Africa could actually grow somewhat after sanctions.

Withdrawal of U.S. Companies from South Africa

If a ban on new investment would have little direct impact on the South African economy, what about requiring U.S. corporations to sell their South African assets and withdraw, as proposed in S.2570? Once again, one finds that the sanction proposed in S.2570 would have little direct impact on the South African economy, despite the fact that U.S. direct investment was worth some $1.3 billion at the end of 1985.

The reason a total pullout by U.S. companies would do little to harm the South African economy is that Pretoria reintroduced a two-tier foreign exchange system on September 1, 1985. South Africa now has two exchange rates. The one for the commercial rand is used for foreign trade dealings, tourists and the payment of dividends to foreign owners of stock in South African companies. The other, the financial rand rate, is used when a foreigner sells an asset in South Africa and then exchanges the rands he receives from the sale for dollars.

When an American firm sells its assets to a South African company, the rand proceeds from the sale go into a financial rand pool. Non-South Africans wishing to invest in South Africa, either through direct investment or by buying shares of South African companies, buy financial rand from the pool. If the supply of financial rand exceeds demand (more foreign investors are pulling out of South Africa than want to come in), the value of the financial rand will fall until a balance between supply and demand is reached. If no foreigners wanted to invest in South Africa, the value of the financial rand would fall to zero.

The advantage of the financial rand from Pretoria's standpoint is that a decision by a company to sell its assets and take the proceeds out of the country has no effect on South Africa's capital flow account. Because of the financial rand system, South Africa would experience no net loss of capital even if all U.S. companies pulled out and, as a result, the size of the South African economy would not be reduced.

This discussion assumes that U.S. firms will obey South Africa's exchange control laws. But, given the fact that the financial rand is already worth 40 percent less than the commercial rand and that the gap between the two exchange rates is likely to widen, companies will be under increasing pressure to find ways to evade the law by getting their assets out through the commercial rand. One relatively easy path would be to sign a licensing agreement giving the South African purchaser of the American assets access to the U.S. parent's manufacturing process and technology. In return, the South African company could be required to pay a fee that covers use of the technology as well as an additional, disguised payment for the assets. Under current South African exchange controls, payments in compliance with licensing agreements are made at the commercial rand rate. Thus, getting the South African purchaser to agree to a licensing agreement with a generous payment schedule is one way a U.S. firm could bring its assets out of the country through the commercial rand rate.

Licensing agreements also are important because, to the extent that the South African economy depends on western technology, such agreements permit South Africa continued access to foreign technology even after foreign firms have pulled out of South Africa. It is interesting to note that at least 15

of the 54 U.S. companies that have pulled out since the beginning of 1985 signed licensing agreements with the companies that purchased their South African assets.

U.S. Bank Loans to South Africa

S.2498 would prohibit new loans by U.S. banks to all public and private sector borrowers in South Africa. By adding private sector borrowers, it would go beyond President Reagan's Executive Order of September 1985, which effectively banned new loans to the South African government and its agencies.

If passed, this legislation would legally mandate what the U.S. banking community is already doing in response to political and economic developments in South Africa and Pretoria's decision on September 1, 1985 to suspend the repayment of foreign loans owed by South African private sector borrowers.

As Table 2 of my testimony shows, the value of U.S. bank loans to all South African borrowers has dropped steadily since September 1984, a period marked by increased political unrest in the country. From a high point of $5.0 billion in September 1984, U.S. banks reduced their South African exposure by more than $1.5 billion before Pretoria declared a debt moratorium in September 1985. In the three months following Pretoria's declaration of a debt moratorium and President Reagan's Executive Order, U.S. banks reduced the value of their outstanding South African loans by another $200 million so that the total at the end of 1985 stood at $3.24 billion.

Even without sanctions legislation, few U.S. banks are likely to lend to the South African private sector as long as the debt moratorium stays in place and South Africa's political unrest continues. Moreover, even before President Reagan's Executive Order, U.S. banks were reducing their loans to the South African public sector.

Impact of the Proposed Sanctions

As I have attempted to show in my remarks, two of the South African sanctions included in S.2498--no new investment by U.S. companies and no new loans by U.S. banks--would essentially mandate what the U.S. business community is already doing based on their objective assessment of the current risks associated with doing business in South Africa. The legislation would have an impact however, if the situation should change in South Africa and companies and banks, in the absence of sanctions, would be tempted to increase their investments in that country.

Requiring U.S. companies to sell their South African assets, as proposed in S.2570, would not have a direct impact on the South African economy as long as the financial rand system stays in place and U.S. firms are permitted to share their technology with the South Africans through licensing agreements.

This does not mean that the South African economy can do without foreign investment and loans. In fact, it desperately needs foreign capital if the economy is to grow at a rate sufficient to provide jobs to keep the

unemployment rate among blacks from growing. The lack of new foreign investment in recent years has been a major contributor to negative rates of economic growth in South Africa. But what the evidence does show is that even in the face of what we might call "voluntary sanctions" on the part of U.S. companies and banks during the last two years, the South African government opted to remain intransigent on the question of political rights for blacks. Much as one might hope otherwise, I see little reason to believe that making these particular "voluntary" sanctions mandatory will alter Pretoria's actions. Nor will these sanctions measurably add to the economic distress that South Africa is currently experiencing, although they would ensure that a temporary respite in the political unrest or a successful rescheduling of South Africa's debt would not be met with a resumption with a resumption of U.S. investment.

This does not mean that "sanctions won't work" or that there is nothing the West can do. Agreement among South Africa's major trading partners--the United States, England, West Germany and Japan--to implement and rigorously enforce prohibitions on the export of high technology goods to South Africa could, over a period of time, undermine that country's economy, motivate South African businessmen to press vigorously for political change, buoy the spirits of most in the black opposition and possibly lead to a less violent transition from minority to majority rule.

Improving ties with the African National Congress and other black opposition groups also could contribute to a more rapid solution to South Africa's political deadlock by giving these groups greater credibility among whites and by increasing the now perilously low credibility of the Western nations in the eyes of black South Africans. S.2498's proposal to authorize $4 million for refugee education assistance would be a step in this direction since the African National Congress is involved in most South African refugee education projects.

TABLE 1: U.S. DIRECT INVESTMENT IN SOUTH AFRICA

($U.S. millions)	1982	1983	1984	1985
Direct Investment	$2,281	$1,987	$1,510	$1,346
Capital Gains and Losses*	-40	-197	-597	-92
Direct Investment minus Cumulative Capital Gains and Losses	2,321	2,224	2,344	2,272
Intercompany Debt Flow (minus numbers indicate flow from the United States)	-32	78	-10	9
Equity Capital Flow (minus numbers indicate flow from the United States)	-39	-2	2	8

* During the period shown in the table, capital gains and losses were nearly entirely due to the reduction in the value of U.S. investments in South Africa because of the rand weakening against the dollar.

Source: U.S. Department of Commerce

APPENDIX I

U.S. Companies that left South Africa in 1984: (7)

Atlantic Richfield	dissolved
Boeing	"withdrew"
Carson Pirie Scott	?
The Continental Corp.	?
Hay Associates	sold to a British company
Parsons & Whittemore	sold to "private buyers"
Tellus Industries	?

U.S. Companies that left South Africa in 1985: (39)

AMR	closed
Alexander & Alexander	sold to SA company
American Express*	closed
BEDO	sold to local management
Blue Bell	?
Carnation	sold to a Swiss company
Celanese	?
City Investing	liquidated
Computer Sciences Corp.	sold to a South African company
Coscelebre	?
Dana	?
Do-All	closed
Ecolaire	?
Engelhard*	closed
Flow General	closed
John Fluke*	sold to a South African company
General Foods*	sold to a South African company
Henkel	sold to a South African company
Illinois Tool Works	"discontinued"
Koppers	closed
Martin Marietta	sold to a Swiss company
Millipore Corp.	sold to local management
Mohawk Data Sciences	sold to local management
Motorola*	sold to a South African company
National Utility Service	?
Navistar*	sold to a South African company
Oak Industries*	sold to a British company
Opico*	closed
Parsons Corp.	project completed
PepsiCo*	sold to a South African group
Perkin-Elmer	sold to local management
Phibro-Salomon	closed
A.H. Robins	sold to a South African company
Singer	sold to a South African company
Smith International	?
Tidwell Industries*	sold to a South African company
TRW*	closed
West Point Pepperell	sold to local management
John Wiley & Sons*	sold to a South African company

TABLE 2: U.S. BANK LENDING TO SOUTH AFRICA

($U.S. millions)	Sept. 1984	Dec. 1984	March 1985	June 1985	Sept. 1985	Dec. 1985
Total loans to all South African borrowers	$4,978.4	$4,704.5	$4,198.5	$3,923.1	$3,441.1	$3,240.5
Loans to the public sector	343.0	353.1	302.2	217.0	180.3	114.1
Loans to South African banks	3,531.4	3,228.6	2,753.3	2,495.6	2,231.3	2,167.6
Other private sector loans	1,103.8	1,122.7	1,142.9	1,210.4	1,029.4	958.6

Source: "Country Exposure Lending Survey," Federal Financial Institutions Examination Council

U.S. Companies that have left South Africa in 1986 so far: (16)

Applied Power Inc.	sold to "European interests"
Ashland Oil Inc.	sold to a South African company
Bell & Howell	sold to a South African company
CBS*	sold to a South African company
Cooper Industries	sold to a South African company
Eaton Corp.	sold to a South African company
GE	sold to a South African company
GTE	sold to a South African company
Kidder, Peabody & Co. Inc.	dissolved
MacMillan	sold to ?
Manpower Inc.	sold to a British company
Pennwalt*	sold to ?
Phillips Petroleum Co.	sold to a West German company
W.R. Stamler Corp.*	liquidated
The Stanley Works	sold to local management
VF Corp.	sold to local investors

* asterisk indicates that the company retains a licensing, distribution or franchise agreement with a company in South Africa.

Senator HEINZ. Mr. Hauck, thank you.

Let me just interrupt the panel to allow Senator D'Amato to make a statement for the record.

OPENING STATEMENT OF SENATOR D'AMATO

Senator D'AMATO. Mr. Chairman, let me commend you for holding this hearing.

I am pleased to join this subcommittee in its consideration of S. 2498, the Anti-Apartheid Act of 1986 offered by the distinguished senior Senators from Massachusetts and Connecticut.

I briefly want to reiterate my support for this measure. I believe it is absolutely essential that our Nation be on the right and moral side of this issue. As Chairman of the Helsinki Commission on Human Rights, I believe we must rid ourselves of a glaring inconsistency in our Nation's human rights policy by implementing further economic sanctions against South Africa.

We have imposed economic sanctions on Nicaragua because of the human rights abuses by its Government, and we denied most-favored-nation trading status to the Soviet Union and many of its satellite states because of their human rights abuses. Although the South African Government shares our anti-Communist beliefs, we cannot condone their apartheid policies, but we must do everything we can to change that Nation's abhorrent policy of apartheid.

S. 2498 puts the United States on the right side of this issue.

Mr. Chairman, I'll ask that the balance of my remarks be included in the record as if read in their entirety. I believe that the time for rhetoric about our shocking revulsion of the apartheid system has ended. Our lack of action seriously jeopardizes our position on the moral high ground throughout the world. We must do more than speak to pursue the current policy of constructive engagement. We must implement a program that demonstrates to the world and to the South African Government that we indeed are opposed to their apartheid.

Mr. Chairman, I thank you for giving me the opportunity of submitting the statement.

Senator HEINZ. Without objection, your entire statement will be a part of the record. We thank you for the statement.

[The complete prepared statement follows:]

STATEMENT OF SENATOR D'AMATO

Mr. Chairman, I am pleased today to join this subcommittee in its consideration of S. 2498, the Anti-Apartheid Act of 1986, offered by the distinguished senior Senators from Massachusetts and Connecticut. I commend you, Mr. Chairman, for holding this hearing. Today, I briefly want to reiterate my support for this measure. It is essential that our Nation be on the right and moral side of this issue.

The Anti-Apartheid Act of 1986 will prohibit any new U.S. loans and investments in South Africa, while prohibiting the importation of certain minerals. It will deny any South African bank from operating in the United States, as well as deny landing rights in the United States to any South African airline. These and other provisions of S. 2498 will increase United States pressure on the South African military government to change its policy of apartheid.

As Chairman of the Helsinki Commission on human rights, I believe we will rid a glaring inconsistency in our Nation's Human rights policies by implementing further economic sanctions against South Africa. We have imposed economic sanctions on Nicaragua because, in part, of the human rights abuses by its Government; and we deny most-favored-nation trading status to the Soviet Union and many of its sat-

ellite states because of their human rights abuses. Although the South African Government shares our anti-Communist beliefs, we cannot condone—indeed, we must do everything we can to change—that nation's abhorrent policy of apartheid. S. 2498 puts the United States on the right side of this issue.

Before the 10th anniversary of the Soweto uprising, which resulted in the death of over 500 blacks, the South African Government imposed a new state of emergency giving the police broad—virtually martial law—powers. As the state of emergency continues, scores have been killed, and thousands are being detained—detained, I might add, withoud trial and, in most cases, without any charges even being levied against them. Meanwhile, press restriction imposed by the South African Government has prevented the world from knowing what is actually happening.

Mr. Chairman, there have been over 1,200 deaths attributed to anti-apartheid violence in the past year alone. In 1985, 10,836 people were detained without charges; an additional 25,000 were arrested between September 1984 and the end of 1985, but were charged. South Africa has transformed itself into a police state, and there seems to be no end to the senseless killings. A tragedy is unfolding that will no doubt get worse before it gets better.

For some time, our Nation has sent mixed signals to the South African Government on its policy of apartheid. Although the United States is firmly against the policy of apartheid, the economic sanctions we have placed against the South African Government are relatively innocuous. Our tough rhetoric is not backed by tough action, and this inaction is not lost on the South African Government. We cannot take the risk that our policy of quiet diplomacy and constructive engagement is viewed as implicit acceptance of apartheid. Such a misconception can only work to strengthen the resolve of the South African Government to maintain apartheid.

Although the administration has been adamant in its strong opposition to apartheid, its approach to help end this most heinous form of bigotry has been plainly ineffective. Essentially, Mr. Chairman, the policy of constructive engagement can no longer be a viable policy. The opportunity for the policy to be successful has passed.

Quiet diplomacy during a time in South Africa which even the President describes as civil war cannot work. The United States should first implement stiffer sanctions against the Government of South Africa, such as those found in S. 2498, to show explicitly that we will no longer do business with a government that follows a policy of apartheid. Second, our Government should do everything in its power to assist in dismantling apartheid peacefully. The potential for bloodshed of monumental proportions in South Africa is too great to play a passive role. The United States should join other nations in providing the means to prevent such bloodshed and to offer solutions to this political chaos.

Enactment of S. 2498 will send a clear and unmistakeable signal to the Botha regime that its policy of apartheid prevents the United States from dealing with South Africa as a legitimate member of the family of nations. Without such a clear statement from the United States, South Africa will continue to deceive itself that the status quo is retainable.

Mr. Chairman, I thank you once again for the opportunity to join your subcommittee today to address this most pressing matter, and I urge you and the Members of the Senate to join me in this effort to retake the moral high ground in the international fight against racism.

Senator HEINZ. Mr. McFadden.

STATEMENT OF W. CLARK McFADDEN II, ATTORNEY, DEWEY, BALLANTINE, BUSHBY, PALMER & WOOD; REPRESENTING THE COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

Mr. MCFADDEN. Thank you, Mr. Chairman. I have a statement that I would like to have submitted for the record and I will try to summarize it.

Senator HEINZ. Very well. Without objection, so ordered.

Mr. MCFADDEN. I am Clark McFadden, a partner in the law firm of Dewey, Ballantine, Bushby, Palmer & Wood. I am representing the Computer and Business Equipment Manufacturers Association [CBEMA], a trade association of producers of information processing, business and communications products, supplies, and services.

My legal practice is concentrated in international trade, export regulation, and investment. In these areas, I have provided legal counsel to CBEMA, as well as a variety of computer and high technology firms.

CBEMA's 38 member companies had combined sales of more than $145 billion in 1985, representing 3.7 percent of our Nation's gross national product and a trade surplus of $4.5 billion.

ECONOMIC, SOCIAL, AND POLITICAL REFORM MUST COME TO SOUTH AFRICA

At the outset, let me emphasize that CBEMA and its members are in total agreement on the underlying issue in South Africa. Apartheid is abhorrent and must end. Meaningful economic, social, and political reform must come to South Africa.

I am here today at the request of the subcommittee and for a limited purpose. My purpose is to convey to the subcommittee CBEMA's position on section 4 of S. 2498. This section deals with the divestiture of the U.S. computer industry in South Africa. CBEMA opposes this provision. In CBEMA's view, the provision will not accomplish its objective, is not justified in its singular treatment of computers, and would be a damaging precedent for U.S. international trade.

Let me briefly review the terms of section 4. Section 4 is entitled "Conditional Divestiture from Computer Industry." It provides two sweeping prohibitions on the U.S. computer industry and two fundamental conditions, either of which would prevent the imposition of the prohibitions.

The first prohibition would require the divestiture by United States companies of their computer sales and servicing operations in South Africa.

The second would halt all U.S. exports of computers, computer software and servicing. This would impose the broadest form of export restriction under U.S. law.

The conditions of section 4 you are already familiar with. They call for the release of all political prisoners in South Africa and good faith negotiations with truly representative leaders of the black majority for a new political system; and the total dismantlement of apartheid.

Now to the operation of section 4. First, CBEMA believes section 4 will not accomplish its objective. The timing and conditions of section 4 purport to create an opportunity or incentive for resolving the pervasive injustice in South Africa. A 1-year period is provided to allow the conditions to be met and thereby avoid the prohibitions against U.S. computers. This attempt at leverage or coercion, however, ignores commercial realities.

As soon as section 4 becomes law, all users of United States computers in South Africa will immediately seek and find alternatives to United States computers. In the computer business, continuous, long-term access to service, maintenance, and spares is essential for product sales. This is equally true of the ability of customers to obtain new and supplementary equipment from their supplier as needs and technologies change. When a customer is faced with a significant risk of a future cutoff of U.S. computers and accompa-

nying products and services, he will immediately stop purchasing U.S. equipment.

Securing non-United States sources of computer supplies can, of course, be readily accomplished in South Africa. Although precise figures are difficult to obtain, United States computer sales constitute well under half of the total sales of computers in South Africa and have been declining sharply. Recent Commerce Department estimates put United States computer imports into South Africa at $126 million, less than 30 percent of total computer imports. Foreign equipment, comparable in quality and price to United States computers, is widely available in South Africa.

In short, CBEMA does not believe the computer divestiture provision will work as it is crafted. It is not a conditional divestiture. It must be seen for what it is: the immediate elimination of all activity of the United States computer industry in South Africa.

SINGLING OUT U.S. COMPUTERS IS UNJUSTIFIED

Second, CBEMA believes there is no justification to single out U.S. computers for divestiture. In addition to restricting certain South African products and entities, S. 2498 would impose several restrictions on United States persons, including prohibitions on new loans and investments in South Africa, development of new energy resources in South Africa, and making new deposits in South African banks. Only the U.S. computer industry, however, would be subject under the bill to divestiture and comprehensive export restrictions.

CBEMA maintains there is no justification to single out the U.S. computer industry for such harsh measures. To begin, the United States Government has already imposed strict and far-reaching controls on the export and use of computers with respect to South Africa.

Let me summarize these briefly for you. All exports of computers to military, police, and apartheid-enforcing entities in South Africa are embargoed.

All exports of computer technical data and software to military, policy, and apartheid-enforcing entities in South Africa are embargoed.

A validated license is required for the export of all computers, including personal computers, to South Africa and must be accompanied by a certification by the computer recipient that it is not affiliated with any apartheid enforcing entity.

And a variety of end-use verification and reporting measures are imposed including a certification from the South African recipient that it will not sell or otherwise make available computer products to the military, police, or any apartheid-enforcing entity in South Africa.

These controls, backed up by criminal penalties, place a legal wall between U.S. computers and the administration and enforcement of apartheid.

The United States computer industry has vigorously sought to ensure that its equipment and services are not made available in South Africa to Government agencies that enforce or administer apartheid. U.S. computer companies support these controls as rea-

sonably related to the goal of the American people and the Congress to end apartheid and as an appropriate means to disassociate the U.S. computer industry from the administration of apartheid. CBEMA urges that these controls be continued.

When they are measured in the context of existing law, the activities of the United States computer industry in South Africa become indistinguishable from those of other industries. Indeed, CBEMA members can point to several major computer projects in the areas of medicine, education, and support services that provide important benefits to the poor and rural populations in South Africa and I would be happy to elaborate on those. But the main point is that United States computers are performing normal economic functions in South Africa similar to other capital goods such as communications equipment, farming equipment, or machine tools.

And there is another consideration here as well. By its own terms, section 4 is strikingly unbalanced and thereby vastly distorts the role of United States computers in South Africa. On the one hand, conditions are established—freeing all political prisoners and forming a new political system for dismantling apartheid—conditions that go to the very heart of the problems in South Africa and would largely resolve the flagrant discrimination that has set South Africa apart from the world community. On the other hand, juxtaposing this ultimate goal is the divestiture of the United States computer industry, a tiny fraction of the South African economy that can be readily replaced through other sources of supply. It is neither realistic nor appropriate for the U.S. computer industry to be cast in such an equation.

SIZE OF U.S. COMPUTER ACTIVITIES IS SMALL

The size of United States computer activities in South Africa are small by international commercial standards, invariably representing less than 1 percent of sales for United States companies. Just as computer divestiture can be expected to have a small impact on South Africa, so too would its direct financial impact be relatively slight on the United States computer industry.

The manner of this divestiture, however, can be expected to have a much broader effect on the United States computer industry worldwide. Section 4 imposes the most extreme form of divestiture. It goes beyond restricting new expansion. It requires complete abandonment. All U.S. computer operations would have to stop. United States companies would have to dispose of their holdings. Existing contracts would have to be broken. And any computer equipment based on United States technology, even if produced by non-United States companies, would be embargoed to South Africa.

As a result, customers around the world contemplating long-term investments in U.S. computers and related technologies will have to be concerned about the potential withdrawal of the U.S. computer industry at the hands of the U.S. Government.

EAA RESTRICTS USE OF SECTION 4

It should be remembered that in the recent renewal of the Export Administration Act the Congress, with the persevering

leadership of Senator Heinz, labored long and hard to ensure that the President would no longer impose measures such as contained in section 4. Before foreign policy export controls can be imposed under the Export Administration Act, the President must meet several criteria, including a determination that controls are likely to achieve their purpose in light of availability of goods from foreign countries; the reaction of other countries is not likely to render the controls ineffective; and the adverse effects on United States international competitiveness do not exceed the foreign policy benefits.

Moreover, before existing contracts and licenses may be broken, the President must determine that "a breach of the peace poses a serious and direct threat to the strategic interest of the United States" and the prohibition "will be instrumental in remedying the situation."

In CBEMA's view, none of these standards of the Export Administration Act are satisfied when applied to the legally limited role of United States computers in South Africa, a role that could be easily filled by freely available foreign products.

Indeed, it should be emphasized S. 2498 itself provides for contract sanctity in prohibiting new loans and investments in South Africa. This is true with respect to loans, investments, and the development of energy resources. The only and glaring exception is the treatment of the U.S. computer industry.

So let me say in conclusion that CBEMA believes that section 4 adds nothing constructive to the bill. It is a sweeping divestiture provision that bears no reasonable relationship to the role of United States computers in the South African economy. Finally, it is a unilateral step that does not meet the standards that Congress itself has decreed should be met before such measures can be imposed.

In these circumstances, Mr. Chairman, CBEMA respectfully urges that section 4 be deleted from the bill.

Senator HEINZ. Does that conclude your statement, Mr. McFadden?

Mr. MCFADDEN. That concludes my statement.

[The complete prepared statement follows:]

STATEMENT OF W. CLARK McFADDEN II
on behalf of
THE COMPUTER AND BUSINESS
EQUIPMENT MANUFACTURERS ASSOCIATION

Mr. Chairman, I am Clark McFadden, a partner in the law firm of Dewey, Ballantine, Bushby, Palmer and Wood. I am representing the Computer and Business Equipment Manufacturers Association (CBEMA), a trade association of producers of information processing, business and communications products, supplies and services.

My legal practice is concentrated in international trade, export regulation and investment. In these areas, I have provided legal counsel to CBEMA, as well as a variety of computer and high technology firms.

CBEMA's 38 member companies had combined sales of more than 145 billion in 1985, representing 3.7% of our nation's gross national product. These companies employ more than 1.2 million people in the United States. In 1985, the U.S. computer and business equipment industry had exports of $16.3 billion and imports of $11.8 billion, generating a trade surplus for the United States of $4.5 billion.

At the outset, let me emphasize that CBEMA and its members are in total agreement on the underlying issue in South Africa: Apartheid is abhorrent and must end. Meaningful economic, social and political reform must come to South Africa.

My purpose here today is to convey to the subcommittee CBEMA's position on Section 4 of S. 2498. This section deals with divestiture of the U.S. computer industry in South Africa. CBEMA opposes this provision. In CBEMA's view, the provision will not accomplish its objective, is not justified in its singular treatment of computers, and would be an unfortunate precedent for U.S. international trade.

SECTION 4: THE COMPUTER DIVESTITURE PROVISION

Section 4 is entitled "Conditional Divestiture from Computer Industry." It provides two sweeping prohibitions on the U.S. computer industry and two fundamental conditions either of which could prevent the imposition of the prohibitions. The first prohibition would make it unlawful for a U.S. person to make or hold any investment in South Africa in a business enterprise that sells computers, software or the servicing of computers. On its face, this prohibition would require the divestiture by U.S. companies of their computer sales operations in South Africa.

The second prohibition would halt all U.S. exports, directly or indirectly, of computers, computer software, and goods or technology intended to service computers. This would impose the broadest form of export restriction under U.S. law. It would cover exports from the United States; it would cover on an extraterritorial basis reexports from foreign countries; and it would cover equipment that was not

necessarily of U.S. origin so long as it was a product of U.S. technology.

The conditions of Section 4 call for 1) the release of all political prisoners in South Africa and good faith negotiations with truly representative leaders of the black majority for a new political system or 2) the total dismantlement of apartheid. The President must certify that one of these events has occurred and the Congress, by joint resolution and under expedited procedures, must approve the President's certification.

The prohibitions are not to be effective during the one-year period following enactment of the bill. If the conditions are not met during that period, however, the prohibitions automatically become effective at the end of an additional six-month period. Like others in the bill, these prohibitions can be removed at any time upon satisfaction of the conditions.

SECTION 4 WILL NOT ACCOMPLISH ITS OBJECTIVE

The timing and conditions of Section 4 purport to create an opportunity or incentive for resolving the pervasive injustice in South Africa. A one-year period is provided to allow the conditions to be met and thereby avoid the prohibitions against U.S. computers. This attempt at leverage or coercion, however, ignores commercial realities.

As soon as Section 4 becomes law, all users of U.S. computers in South Africa will immediately seek and find alternatives to U.S. computers. In the computer business,

continuous, long-term access to service, maintenance and spares is essential for product sales. That is equally true of the ability of customers to obtain new and supplementary equipment from their supplier as needs and technologies change. When a customer is faced with a significant risk of a future cutoff of U.S. computers and accompanying products and services, he will immediately stop purchasing U.S. equipment.

Securing non-U.S. sources of computer supplies can, of course, be readily accomplished in South Africa. Although precise figures are difficult to obtain, U.S. computer sales constitute well under half of the total sales of computers in South Africa and have been declining sharply. Recent Commerce Department estimates put U.S. computer imports into South Africa at $126 million, less than 30% of total computer imports. Foreign equipment, comparable in quality and price to U.S. computers, is widely available in South Africa. The foreign competition for computer customers in South Africa as in other markets has long been intense. In this situation, no U.S. computer company will be able to stay in business in South Africa upon enactment of the computer divestiture provision.

In short, CBEMA does not believe the computer divestiture provision will work as it is crafted. It will not offer conditional divestiture. It must be seen for what it is: the immediate elimination of all activity of the U.S. computer industry in South Africa.

THERE IS NO JUSTIFICATION TO SINGLE OUT U.S. COMPUTERS FOR DIVESTITURE

In addition to restricting certain South African products and entities, S. 2498 would impose several restrictions on U.S. persons, including prohibitions on new loans and investments in South Africa, development of new energy resources in South Africa, and making new deposits in South African banks. Only the U.S. computer industry, however, would be subject under the bill to divestiture and comprehensive export restrictions.

CBEMA believes there is no justification to single out the U.S. computer industry for such harsh measures. To begin, the U.S. Government has already imposed strict and far-reaching controls on the export and use of computers with respect to South Africa. It may be useful to summarize for the subcommittee the nature and scope of these restrictions:

-- all exports of computers to military, police and apartheid-enforcing entities in South Africa are embargoed;
-- all exports of computer technical data and software to military, police and apartheid-enforcing entities in South Africa are embargoed;
-- a validated license is required for the export of all computers, including personal computers, to South African Government entities and must be accompanied by a certification by the computer recipient that it is not affiliated with any apartheid-enforcing entity; and
-- a variety of end-use verification and reporting measures are imposed including a certification from the South African recipient that it will not sell or otherwise make available computer products to the military, police or any apartheid-enforcing entity in South Africa.

These controls, backed up by criminal penalties, place a legal wall between U.S. computers and the administration and enforcement of apartheid.

The U.S. computer industry has vigorously sought to ensure that its equipment and services are not made available in South Africa to government agencies that enforce or administer apartheid. U.S. computer companies support these controls as reasonably related to the goal of the American people and the Congress to end apartheid and as an appropriate means to disassociate the U.S. computer industry from the administration of apartheid. CBEMA urges that these controls be continued.

When they are measured in the context of existing law, the activities of the U.S. computer industry in South Africa become indistinguishable from those of other industries. Indeed, CBEMA members can point to several major computer projects in the areas of medicine, education and support services that provide important benefits to the poor and rural populations in South Africa. But the main point is

that U.S. computers are performing normal economic functions in South Africa similar to other capital goods such as communications equipment, farming equipment, or machine tools.

By its own terms, Section 4 is strikingly unbalanced and thereby vastly distorts the role of U.S. computers in South Africa. On the one hand, conditions are established -- freeing all political prisoners and forming a new political system or dismantling apartheid -- that go to the heart of the problems in South Africa and would largely resolve the flagrant and systematic discrimination that has set South Africa apart from the world community. On the other hand, juxtaposing this ultimate goal is the divestiture of the U.S. computer industry, a tiny fraction of the South African economy that can be readily replaced through other sources of supply. It is neither realistic nor appropriate for the U.S. computer industry to be cast in such an equation.

THE COMPUTER DIVESTITURE PROVISION WOULD BE A DAMAGING PRECEDENT

The size of U.S. computer activities in South Africa are small by international commercial standards, invariably representing less than one percent of sales for U.S. companies. Just as computer divestiture can be expected to have a small impact on South Africa, so too would its direct financial impact be relatively slight on the U.S. computer industry.

The manner of this divestiture, however, can be expected to have a much broader effect on the U.S. computer industry worldwide. Section 4 imposes the most extreme form of divestiture. It goes beyond restricting new expansion. It requires complete abandonment. All U.S. computer operations would have to stop. U.S. companies would have to dispose of their holdings. Existing contracts would have to be broken. And any computer equipment based on U.S. technology, even if produced by non-U.S. companies, would be embargoed to South Africa.

The goals of S. 2498 are vital and compelling. CBEMA and its membership support these goals. But Section 4 will generate a tangible cost to the competitiveness of one of the leading export sectors in the United States without significantly advancing these goals. Under Section 4, the U.S. industry would be deserting customers regardless of legal commitments and the damage to long-standing investments in U.S. equipment. Equally disturbing to world markets will be the knowledge of foreign producers that by using U.S. computer technology in their products, they could be subjecting themselves to potential criminal liability under Section 4.

These adverse effects will transcend the situation in South Africa. They must be seen in the context of an industry that is increasingly perceived as an unreliable supplier because of U.S. Government action, is already subject to extensive export controls for national security purposes and

no longer enjoys a clear technological lead over foreign competitors.

In short, customers around the world contemplating long-term investment in U.S. computers and related technology must be concerned about the potential withdrawal of the U.S. computer industry at the hands of the U.S. Government.

It should be remembered that in the recent renewal of the Export Administration Act this subcommittee along with the Congress as a whole labored long and hard to ensure that the President would no longer impose measures such as contained in Section 4. Before foreign policy export controls can be imposed under the Export Administration Act, the President must meet several criteria including a determination that:

-- the controls are likely to achieve their purpose in light of availability of goods from other countries;
-- the reaction of other countries is not likely to render the controls ineffective; and
-- the adverse effects on the U.S. international competitiveness do not exceed the foreign policy benefits.

Moreover, before existing contracts and licenses may be broken, the President must determine that "a breach of the peace poses a serious and direct threat to the strategic interest of the United States" and the prohibition "will be instrumental in remedying the situation."

None of these standards of the Export Administration Act are satisfied when applied to the legally limited role that U.S. computers play in the South African economy, a role that could be easily filled by freely available foreign products.

The Administration has also come to recognize the debilitating effects of unilateral sanctions like those contained in Section 4. In recent cases, such as imposing sanctions upon Nicaragua, the Administration has sought to respect contract sanctity and not unilaterally impose controls on an extraterritorial basis.

Indeed, S. 2498 itself provides for contract sanctity in prohibiting new loans and investments in South Africa. The only and glaring exception is the treatment of the U.S. computer industry.

CONCLUSION

CBEMA believes that Section 4 adds nothing constructive to the bill. It is a sweeping divestiture provision that bears no reasonable relationship to the role of U.S. computers in the South African economy. Finally, it is a unilateral step that does not meet the standards that Congress itself has decreed should be met before such measures can be imposed.

In these circumstances, CBEMA respectfully urges that Section 4 be deleted from the bill.

Senator HEINZ. Very well.

Mr. van Eck, Mr. Hauck has testified that in effect disinvestment is taking place in South Africa and he cites a variety of statistics that appear to be quite accurate and quite compelling.

You are advocating, I suppose, a continuation of investment in one particular area—gold mining stocks. Why isn't disinvestment continuing in gold mining stocks? Are your investors unaware of the political situation in South Africa? Are they willing to take the risks? Apparently other knowledgeable U.S. corporations aren't.

DISINVESTMENT OF GOLD MINING STOCK

Mr. VAN ECK. Mr. Chairman, disinvestment in South African gold mining shares is taking place. I don't have the exact facts in front of me, but 10 years ago maybe 35 percent of the South African mining shares were held within South Africa and 65 percent held without South Africa. That is now down to possibly 27 percent held outside South Africa and 73 percent in South Africa. These are not precise figures, but it gives an order of magnitude.

In South Africa the rate of inflation is from 15 to 20 percent. When you have such a rate of inflation gold mining shares become a superior investment. South African individual investors and especially the insurance companies have been buying gold mining shares. That is where the gold mining shares have gone to, and they are in very strong hands there.

I might say that I'm asking that not only gold mining shares but all shares be excluded from this bill. Most Americans buy gold mining shares. They want it as a hedge against resurging inflation or a hedge for other reasons. In certain phases of the business cycle, gold is the dominant investment. We've seen that in two cycles in the 1970's. So, many Americans want that hedge in their portfolio.

Senator HEINZ. Now your testimony also is basically against any legislation that imposes economic sanctions on South Africa and you cite in your statement that South Africa in effect, according to your statement, is making progress and we should give credit to its liberalization, that this is the way to bring about peaceful, constructive change.

What's your experience with South Africa? How knowledgeable are you? Why are you giving us foreign policy advice? Have you lived there? Have you visited there? What's your situation?

Mr. VAN ECK. Basically, we started International Investors to invest in the blue-chip growth stocks outside the United States. In 1968, we began to concentrate in gold mining shares. We saw the inflation coming, and we felt that that was the place to be and it surely was.

Senator HEINZ. Have you visited South Africa?

Mr. VAN ECK. Yes, I've visited South Africa.

Senator HEINZ. How many times?

Mr. VAN ECK. Senator, I would say maybe 10 times.

Senator HEINZ. How recently have you been in South Africa?

Mr. VAN ECK. Not for about 4 or 5 years. I'm planning to go in September.

Senator HEINZ. Well, I think you will find the situation is different today than it was 4 or 5 years ago.

Mr. VAN ECK. Yes, sir. We've had our mining analyst there who just got back 2 weeks ago. Another one of our people was down there in January. We also, have a representative there. We try to follow it very closely, sir.

Senator HEINZ. Mr. McFadden, you object to one of the bills singling out computer investments. S. 2570 doesn't single out computer investments. You weren't asked to testify on that bill. That's the Cranston-Dellums bill. It virtually bans the export of any technology which would include computers or computer products made by American licenses to South Africa.

Would that eliminate your objections?

Mr. MCFADDEN. Unfortunately, Senator, I am not at liberty to testify on other legislation. CBEMA did not have a chance to consider other alternative bills. We responded as quickly as we could to the request of the subcommittee.

Senator HEINZ. I'm going to submit to you for a written response three additional questions that are somewhat technical in their approach.

Mr. Hauck, you testified largely about S. 2498. In your statement you conclude that if sanctions were to be effective, first that they should be multilateral. You mentioned agreement between the United States, England, West Germany, and Japan. And second, that they should be focused on the export of high technology goods and I assume the technology itself.

Do I understand you correctly?

Mr. HAUCK. Yes. That's a correct summary.

Senator HEINZ. Therefore, I gather that you would be saying that the Dellums bill which does that is the right way to proceed. Is that correct?

Mr. HAUCK. Once again, I haven't looked at the entire Dellums bill, but I would say that if sanctions are instituted, they should be multilateral and that they should be focused on the areas where there would be an economic impact on South Africa.

Senator HEINZ. Senator Kennedy argues that the economic impact is not the significant factor.

Mr. HAUCK. I found that testimony very helpful and I would agree with many of the things that Senator Kennedy said.

What I was trying to do in my testimony was to make a technical assessment of the economic effects of S. 2498. I think, as I pointed out, it's mandating what companies are already doing. But one must remember that in the past companies have also pulled out their investment—after Sharpville in 1960, after Soweto in 1976—and then once things quieted down they came back. Clearly, Pretoria is hoping, through the recent declaration of a state emergency, to quiet things down and they hope that foreign investors would come back. The passage of S. 2498 would prevent that.

In the last paragraph of my testimony I talked about trying to find ways to develop closer ties with black opposition groups in South Africa. This has no economic impact, but I think that's the direction Congress should look especially since I think everyone agrees that the economic impact of sanctions would not be felt immediately and perhaps not even be in the mid- to long-term, where-

as the political impact of talking with the opponents of Pretoria, developing relations with them, so that if there does come a point in the future where the West can act as a mediator, we would at least have the contacts and the credibility with both sides that come to the negotiating table.

IMPACT ON NEIGHBORING COUNTRIES

Senator HEINZ. Some critics of sanctions have argued that if we ever did develop effective multilateral sanctions that apart from their effect on South Africa they would have an even more significant impact on Zimbabwe, Zambia, and Mozambique because of the transportation routes and markets that those three countries necessarily have in South Africa.

Is that a good argument or is that a fallacious argument?

Mr. HAUCK. I think there's quite a bit of truth to that. The economies of the front-line states, without some type of additional effort by the West, would be harmed by sanctions against South Africa. I think South Africa would ensure that the front-line economies would be harmed. Even if it did not happen naturally, they would do it consciously in order to be able to point to that.

Senator HEINZ. Are the front-line states aggressively advocating the economic isolation of South Africa?

Mr. HAUCK. In public statements by the front-line state presidents, yes; they have been advocating it.

Senator HEINZ. Now if sanctions were pursued and they turned out to be only unilateral on the part of the United States, and part of those sanctions were immediate disinvestment by American companies in South Africa, what would be the effect of that on the financial rand? What would be the real world consequences for American firms and for South Africa? How would that work?

Mr. HAUCK. If all American companies were required to sell their investment and to then exchange the financial rands that they received for dollars, the financial rand would plummet because the supply of financial rand would jump dramatically and there would be no corresponding increase in demand.

Senator HEINZ. I imagine the first thing an American firm would do is they would look around for a buyer.

Mr. HAUCK. Yes; they would look around for a buyer. The buyers are going to be largely South Africans, and I say that because the European companies who are making some of the same assessments that the United States companies have made are not looking to expand their investments in South Africa, whereas the South African companies have quite a bit of investment capital, bottled up inside the country because the exchange controls affect South African companies as well, and they would be very eager buyers of United States firms.

DISINVESTMENT BENEFITS SOUTH AFRICANS IN SHORT TERM

Senator HEINZ. Well, is it your position, then, that that kind of disinvestment in a sense benefits South Africans at least in the short term?

Mr. HAUCK. Well, that's one of the reasons why I raised licensing agreements. If a United States company makes it known that they

will enter into a licensing agreement, a manufacturing agreement, then their assets are worth more to a potential South African purchaser. If the U.S. parent is not willing to enter into a licensing agreement, then the plant and the equipment has been basically built to manufacture certain types of products and if the buyer doesn't have the technology to manufacture those products those assets aren't worth very much.

So it's in the interest of both the United States seller and the South African buyer to enter into a licensing agreement.

Assuming there are licensing agreements, what you would find is that after the change in the ownership of the assets the same products would be manufactured and there wouldn't be any immediate impact on the South African economy. As for the question of whether South Africa would benefit, I think in some cases the South Africans would get a pretty good deal—it would be at a fire sale price—and in other cases, depending upon its negotiating skills and the demand for the United States asset, the United States company might get something related to a market value for their assets.

Senator HEINZ. Would South Africa benefit from the nonrepatriation of earnings by Americans if American companies were purchased, whether or not they were fire sale prices?

Mr. HAUCK. The $14 million that I was talking about?

Senator HEINZ. Yes.

Mr. HAUCK. I think on paper, yes; they would benefit because there is more capital flowing from South Africa to the United States than vice versa.

What we don't know is the impact on business confidence in South Africa of sanctions legislation by the United States and other Western countries. If business confidence plummets in South Africa because of the imposition of sanctions, you will find many South African companies and individuals seeking ways to get money out of the country illegally rather than investing it in the country.

So although on paper it may look like there would be more money for investment, if business confidence falls there might actually be less investment being made in South Africa.

Senator HEINZ. So if I understand your testimony correctly, it is that a required disinvestment in the short run, and particularly if it's accompanied by some form of licensing or the ability to transfer technology which may just be the retention of several key employees who have been properly trained either in the United States or who are American nationals, that that in the short run has some—leaving aside the international implications that we don't quite know how to measure but if unilateral—probably benefits white South Africans and the South African Government.

Mr. HAUCK. I would disagree with the term "benefits." I think it leaves the situation the same.

Senator HEINZ. But it certainly doesn't benefit American businesses who have invested in South Africa. They would have to sell at substantially reduced prices.

Mr. HAUCK. They would take some losses.

Senator HEINZ. Notwithstanding that, should we have a total disinvestment ban in South Africa because, as Senators Kennedy and Weicker point out, it's the right thing to do?

Mr. HAUCK. I'm glad you're raising that because the important point is what we do hope to accomplish with sanctions. I think in the entire debate that's the question that has to be uppermost in people's minds. There are many things that one can hope to accomplish. You can hope to cripple the South African economy. I think as the testimony by everyone has shown this morning, the likelihood of crippling the South African economy immediately is pretty small, no matter what action is taken.

HARD LINE ATTITUDE OF PRESENT GOVERNMENT

If the purpose of sanctions is to send a message to Pretoria, I believe that the sanctions message might get through, although from what I read and what I hear the South African Government is already operating under the assumption that there will be very widespread sanctions and they're going ahead with their policies regardless of that.

I think there's a faction within the South African Government which now has the upper hand which says, "We will suffer and we will go it alone and we will carry out our own policy."

The other important purpose of sanctions is gaining credibility with black South Africans, which as I noted is at an incredibly low point. Sanctions I believe are one way to gain credibility. As I suggest in my testimony, dealing with the major black opposition groups, exiled groups, is another way and, I would argue, a more effective way than through sanctions.

Senator HEINZ. Mr. Hauck, thank you.

Senator Proxmire.

Senator PROXMIRE. Why don't I defer to Senator Sarbanes? He's been waiting a long time and I've been out.

Senator HEINZ. Senator Sarbanes.

Senator SARBANES. Thank you. I have a few questions of each of you and then a broad general question I want to put to the panel.

First of all, Mr. van Eck, in looking at your statement I'm interested to know what the so-called apartheid, to which is you make reference in the bottom paragraph on page 1 is?

Mr. VAN ECK. Mr. Senator, I think that the word "apartheid" requires a little definition. It's being used fairly broadly here today. If you define apartheid as being the legal separation of races, that process has almost been completed. It began in 1976 and I think your committee should recognize that a great deal of steps have been taken to abolish this so-called apartheid, which is legal separation of the races.

DISMANTLING SEGREGATION LAWS

In 1976, they abolished segregation in sports and it's just been one step after another. The last one has been the influx control which was a major objection of, for instance, of Mr. Mandela. This has been removed. There are two remaining acts, as I understand it. One is the Group Areas Act, and I understand that is about to be abolished; and then there's the Registration Act. My guess is

that 1 year from now apartheid, as defined by the legal separation of the races, will be completely abolished.

Senator SARBANES. Why did they abolish separation in sports?

Mr. VAN ECK. I think there's been some outside pressure, Senator, but I think they are also trying to do the right thing. As far as allowing black unions, they have generally appointed commissions who have studied the matter. In my judgment, one should give them credit for trying to do the right thing.

Senator SARBANES. So you don't agree with Bishop Tutu when he says:

> I am unaware of anything that has changed in South Africa without pressure. Changes in the sports policy were due to pressure from the sports boycott and not because there's been a change of heart on the part of white sports administrators.

Mr. VAN ECK. There certainly has been pressure from the outside, sir. I think I did say that. But there's also been internal steps taken. Their policy is to have black representation and, again I use the word "black" advisedly. There are 10 different tribal people in South Africa and you have the city blacks. It's very complicated. I haven't heard Chief Buthelezi's name mentioned once today. If ever there's a leader of the so-called blacks in South Africa, he has the biggest domestic political party. I've heard a lot of people quoted today who have not been elected by any constitutency.

Senator SARBANES. Now on page 2 you say——

Senator HEINZ. Senator Sarbanes, let me just interrupt you for a moment if I may just to observe that I have a speaking engagement at noon. Senator Proxmire has kindly agreed to chair the rest of the hearing and I want to apologize to the witnesses that I won't be here for the remainder of your responses to questions. But I want to thank you all for being extremely helpful and we're most appreciative. Thank you. And I thank Senator Proxmire.

Senator SARBANES. On page 2 you state:

> To impose economic sanctions now, in my judgment, would contribute to more violence by the radical black elements against the moderates of their own race who support economic advancement and negotiated political change.

Do you regard Bishop Tutu as a part of the "radical black element" or the moderates seeking "negotiated political change."

Mr. VAN ECK. Well, that's a tough question, Senator. In my judgment, he follows the activist line, yes.

Senator SARBANES. Well, what does that mean? I didn't ask whether he was an activist. I asked whether you regard him as a "radical black element" contributing to more violence or a moderate black supporting "negotiated political change."

Mr. VAN ECK. I know testimony has been given that he's a moderate. I don't really know him. I cannot express an opinion on that fact.

Senator SARBANES. Well, you've made an offset here. Where in your categorization do you place Bishop Tutu?

Mr. VAN ECK. I don't know enough about Bishop Tutu, sir.

Senator SARBANES. Well, earlier you said you were "fairly expert" on South Africa.

Mr. VAN ECK. I'm trying to protect American investors in South Africa, sir.

Senator SARBANES. I understand, but you're making some sweeping statements here and I want to get some sense of how you see the South African landscape.

How about Rev. Beyers Naudé? Which of these groups does he belong to? Is he a "radical black element" contributing to violence or a moderate seeking "negotiated political change?"

Mr. VAN ECK. I have no opinion on that, sir. When I talk about radical blacks——

Senator SARBANES. What about the leaders of the United Democratic Front?

Mr. VAN ECK. When I talk about the radical black elements, I'm talking about the radical youths that commit the barbaric "necklace" treatment that killed over 500 moderate blacks in the last year and are trying to seize power in the black townships.

Senator SARBANES. Do you regard people like Bishop Tutu and leaders of the United Democratic Front who are calling for economic sanctions as a radical element, or as people seeking negotiated political change?

Mr. VAN ECK. I don't know.

Senator SARBANES. All right.

Mr. Hauck, I'd like to ask you about companies that have left South Africa and are not engaged in licensing agreements. How does that work?

Mr. HAUCK. In some cases, the——

Senator SARBANES. That's the larger number of companies by far, as I read your appendix. Is that correct?

Mr. HAUCK. Part of the explanation for the larger number is that we have not surveyed all the companies that have pulled out to find out whether they have licensing agreements or not. The companies marked with an asterisk are the ones that we know of. We're in the process of talking to the other companies. So I don't know what the final numbers are going to be. I suspect it's higher than the 15.

Also, a licensing agreement would not be needed if the type of assets or manufacturing process that the U.S. company had is fairly basic and can be used for many other types of products. There might not be any interest on the part of the purchaser. The purchaser may just be buying a warehouse or a plant and industrial land and is not interested in licensing.

Senator SARBANES. Assuming that that's the case, then how do they get their money out?

Mr. HAUCK. They sell their assets to a South African purchaser. They receive rand which go into the financial rand pool. As people overseas, including some of Mr. van Eck's clients who wish to purchase shares in South African gold mines, they come to the financial pool from outside South Africa, purchase those financial rand, and invest them in the South African stock exchange or invest them in other types of assets, and then the American company who sold its assets can exchange them and receive dollars.

Senator SARBANES. At what discount are they selling?

Mr. HAUCK. Presently, the financial rand is sold at about a 40–41 percent discount from the commercial rand rate.

Senator SARBANES. But they're getting out ahead of the rest of them, aren't they?

Mr. HAUCK. Yes.

Senator SARBANES. From a business point of view, it may be a very wise decision on their part.

Mr. HAUCK. The 55 United States companies that have pulled out of South Africa since the beginning of 1984, with a few exceptions, tend to be smaller companies, ones that had very little invested in South Africa, but they are for various reasons trying to get out.

LARGE COMPANIES ARE TRAPPED IN SOUTH AFRICA

Companies like General Motors and other large companies like the oil companies, firms with a lot of assets invested, are trapped in South Africa because the financial rand is trading at such a low value. I'm not saying that they don't want to stay, but even if they wanted to leave they would get so little for their assets they are in that sense trapped in the country.

Senator SARBANES. Mr. McFadden, I had the same question as the chairman. But I take it you're in no position to respond to an inquiry as to whether your objections to the legislation would end if the computer industry were treated like every other industry, even though that might lead generally to the very result that section 4 would lead to in your industry. Is that correct?

Mr. MCFADDEN. That is correct, sir.

Senator SARBANES. You're not in a position to answer that?

Mr. MCFADDEN. No, I am not.

Senator SARBANES. The general question I want to put to the panel is: Do you think it's better for this issue to be resolved through private action—through demonstrations, pressures on companies, sit-ins and so forth—or should there be a public policy on it?

Mr. HAUCK. I believe that demonstrations, actions on campus, sit-ins at companies, are all trying to affect South Africa through United States companies that have invested there. That is one route because I believe United States companies do have leverage in South Africa to effect some changes. Their pullout would also have an impact on white attitudes in South Africa.

Another route is one that only the United States Government can take and is in the political area and hopes to have an impact on the various political bodies in South Africa, in the black community, as well as with the South African Government. That is something that demonstrations on campus, demonstrations at annual meetings of companies, cannot really address.

Mr. VAN ECK. As I said in my statement, I would recommend that we follow President Reagan's constructive engagement policy.

Senator SARBANES. Mr. van Eck, were you supportive of the President's efforts to impose economic sanctions on Libya?

Mr. VAN ECK. I had nothing to do with that, sir.

Senator SARBANES. Well, do you think that was a wise proposition on the President's part?

Mr. VAN ECK. I don't know.

Senator SARBANES. So you're not against economic sanctions under any and all circumstances?

Mr. VAN ECK. No, I am not, sir.

Senator SARBANES. I have no further questions, Mr. Chairman.

Senator PROXMIRE. Thank you, Senator Sarbanes.

I'm sorry that I had to be absent. I had to go to the floor and I couldn't be here during part of the testimony. I wanted to express my gratitude to all of you for coming forward and I also would like to especially thank Mr. McFadden who as I understand it has worked on the Hill and worked with considerable skill and ability. We respect all of you but we know Mr. McFadden a little bit better and want to thank him especially for coming up.

Mr. McFadden, it seems to me you have a very, very difficult position here. You represent the Computer and Business Equipment Manufacturers Association and as I understand it in your response to Senator Sarbanes, your position was that the computers ought to be treated like every other business. That was your objective.

But, of course, computers have a special role to play in apartheid. That's the problem. As I understand it, the computers are used by the police as an enforcement tool, an administrative tool, and it's very, very helpful for them to have the kind of computers we have.

So it seems to me that if we treated computers like every other business and permitted them to be handled the same way, that no matter how earnestly we would wish they wouldn't fall into the hands of the police, no matter what provisions we would make that they wouldn't, one way or another they would.

COMPUTER INDUSTRY'S PRESENT RESTRICTIONS

Mr. MCFADDEN. Let me just respond to that, Senator. We do not believe the computer industry should be treated like everyone else. The U.S. computer industry has in fact come forward and supported special restrictions and conditions on the use of their equipment.

Senator PROXMIRE. How do we enforce such restrictions in a sovereign country that's hostile to us on this issue?

Mr. MCFADDEN. There are a variety of measures to do it. The companies spend a great deal of time and attention and energy themselves trying to screen customers, police use, and require a whole variety of certifications and reporting.

But in addition, there are very extensive export controls in place now, in many ways more extensive on South Africa than vis-a-vis the Soviet Union. They require a whole variety of things from special certifications, special identification of customers, auditing requirements, end use and delivery verification—a whole series of restrictions on how computers can be used and responsibilities on U.S. exporters for that.

It is because of these restrictions which U.S. computer firms have fully supported that we believe that now, under the circumstances, the computer industry is like every other industry. That is, the U.S. computer industry is like every other U.S. industry. They're not in any way providing this kind of special support or unique support to apartheid.

Senator PROXMIRE. Well, my concern is that computers are special and should be treated differently from other items just as we would oppose exporting some kind of weapon which was especially

used against the black majority by the white minority there. We wouldn't want to sell them dum-dum bullets if that were it, or perhaps we wouldn't want to sell them some kind of gas that could be used to give them an enforcement strength. That's not an issue because I'm sure they have it and anyway they produce it, but it seems to me that computers are especially helpful to the Government there. You might argue that they would get it from the Japanese who have a fine computer industry or from some other source, but if we expect to get cooperation internationally we have to take the first step ourselves.

Mr. MCFADDEN. Well, we believe we have taken that step.

We strongly support that step. We do not want our equipment and our computers used in any way in the enforcement or administration of apartheid.

Unfortunately, for the country as a whole, that step has not been taken by a variety of other suppliers. So we have a situation where the U.S. equipment can be readily substituted, easily replaced by a whole variety of other sources of equal capability and qualification.

So we certainly do not object to the restriction and the goal that you are describing. We do not want our computers misused in the enforcement or administration of apartheid. We would hope other equipment would not be used in that way either. But we see that in fact our foreign competitors are not restricted in any way and in those conditions it is particularly futile to try to expand restrictions in a commercial context.

Senator PROXMIRE. Well, I want to come to that question in a minute because I think that depends upon the aggressiveness of the President in trying to get international cooperation and I don't think there much evidence of that kind of aggressiveness on the part of the administration.

Mr. MCFADDEN. But this has been a very difficult matter for management of U.S. computer firms and they feel strongly about their equipment not being misused and it's a matter of great importance to them.

Senator PROXMIRE. Mr. van Eck, you responded to Senator Sarbanes with respect to Libya. Let me ask you a question that seems to most of us I think, and perhaps to you too, as even more black and white.

In the 1930's, would you have supported the imposition of economic sanctions against Nazi Germany to signal our opposition to that country's treatment of its Jewish population?

Mr. VAN ECK. I guess I certainly would have.

Senator PROXMIRE. You certainly would have. So it appears according to that response and also to your response to Senator Sarbanes that you don't oppose sanctions in principle, as you say on page 1 of your statement, "as an intolerable interference with the free market which exists in the free world," but rather you quarrel with the wisdom of using sanctions in South Africa, especially if they harm the interests of your corporation. Is that correct?

Mr. VAN ECK. I'm thinking of our shareholders, Senator.

Senator PROXMIRE. Well, would you be thinking of your shareholders with respect to Hitler? Supposing your corporation was selling to Hitler?

Mr. VAN ECK. I don't think that's a fair comparison at all.

Senator PROXMIRE. Why isn't it a fair comparison?

Mr. VAN ECK. Because Americans selling shares to another American is not contributing to apartheid, as I pointed out in my statement. And going back to Hitler goes way back, sir.

Senator PROXMIRE. Well, investment in South Africa or investment in Hitler's Germany strengthens the Government which has overwhelming, dominant power and control.

Mr. VAN ECK. No, sir. Investment gives people jobs. It helps the black people.

Senator PROXMIRE. Well, it may or may not help the black people.

Mr. VAN ECK. But if you give a person a job, it helps them.

Senator PROXMIRE. Well, it may or may not result in giving them jobs. What investment does is it gives the discretion, the real power, to the people who control the government, who have all the votes. Blacks have no votes at all. They have no ability to determine what happens to that investment.

Mr. VAN ECK. Senator, that is not true. The blacks in South Africa do have the votes in their own areas. I think you're referring to one-man-one-vote in a unitary state. South Africa does have votes. They've been trying to encourage democracy in the townships. The Zulus have the vote. All the different tribal areas do have the vote in their own area.

Senator PROXMIRE. Well, they have a vote that is so limited that it's a joke.

Mr. VAN ECK. That's your opinion.

Senator PROXMIRE. You don't really maintain that they have a vote that's at all equivalent to the kind of vote a white South African has, do you? Do they have anything to say about who is in the Parliament that runs the country or their foreign policy or their police policy or their military policy or whatever kind of rights policy they have for majorities and minorities?

AFRICA IS NOT AMERICA

Mr. VAN ECK. I would urge you to consider your policy as applicable to all African countries. Africa is not America. You cannot judge Africa by America. People have to be educated to have democracy and the votes. They're not educated anywhere in Africa.

Senator PROXMIRE. Well, now, come on, if they're not educated in South Africa, that's a country that has a relatively substantial economy.

Mr. VAN ECK. Yes, sir.

Senator PROXMIRE. They certainly would have the opportunity to educate the majority of their citizens and if they're not educated it's because the Government chooses not to provide education for them. There's no question—or is there a question in your mind that the blacks have an equal opportunity for education in South Africa with the whites? Do you really maintain that?

Mr. VAN ECK. That I don't know, sir. That I don't know.

Senator PROXMIRE. You don't know?

Mr. VAN ECK. There are black universities. Blacks are admitted now to white universities, but I don't know what the budget is. I don't know those details.

Senator PROXMIRE. Well, I'm surprised because you're an expert on South Africa.

Mr. VAN ECK. On South African gold mining shares.

Senator PROXMIRE. Well, it seems to me that education is very important to the investment process. As an investor, that's one of the first things you would look to in a country, whether it has a good educational system, whether the majority of the people have the educational capability to do the economic job. Isn't that right?

Mr. VAN ECK. When they get jobs in the mines, they have to have aptitude tests such as whether they can put round pegs in square holes. Then they are allocated different jobs. They are not educated in political terms. These are very backward people, if I may say so. They come to the mines from the tribal areas. They speak 10 different languages, and also 40 percent of the blacks employed in the mines come from outside of South Africa and speak many additional languages. They want to work in South Africa. It's not like Russia where they——

Senator PROXMIRE. These are very backward people——

Mr. VAN ECK. Yes, of course they're backward.

Senator PROXMIRE [continuing]. Because they haven't been given a real opportunity, isn't that right?

Mr. VAN ECK. All right, sir, but it's physically impossible to give them a real opportunity. One has to be realistic. Have you been to South Africa?

Senator PROXMIRE. You would expect that the majority of people in any country would be given some beginning of a rudimentary universal education.

Mr. VAN ECK. Yes, sir, the beginning, but this is a long process.

Senator PROXMIRE. They've had a long time. Blacks were there before the whites were.

Mr. VAN ECK. That's not true either.

Senator PROXMIRE. It's not true that the blacks were there before the whites?

Mr. VAN ECK. No, sir. The whites came first and then the blacks came down.

Senator PROXMIRE. Well, I think we disagree on that. That's a matter of fact. I suppose it's not relevant to my questioning, but it's a matter of fact. It's my understanding that the blacks were in Africa, including South Africa. before the whites landed in the 16th century.

Mr. VAN ECK. The Hottentots were there, yes.

Senator PROXMIRE. Well, they're black. They're human beings.

Mr. VAN ECK. Yes, sir. I'm not saying they're not human beings. We're talking about education, sir.

Senator PROXMIRE. Well, the argument between you and me is who was there first, and I say the blacks were there before the whites were.

Mr. VAN ECK. Well, if you study the history you will find that in certain areas of southern Africa the whites came into the southern part and there were no blacks there. Then the black, came down.

Senator PROXMIRE. You're saying that the whites came into a country which was not populated at all in any way; is that right?

Mr. VAN ECK. Yes, the southern part, yes.

Senator PROXMIRE. Well, there may be small parts of it, but South Africa as a whole there were people there and there were some people in South Africa and those people were black. They were there first. They're the majority.

Mr. Hauck, let me ask you a question. On page 5 of your testimony you say that sanctions can work if they are instituted multilaterally because they would motivate South African businessmen to press vigorously for political change.

MULTILATERAL SUPPORT OF OTHER NATIONS

Are you aware that S. 2498 has a provision requiring the President to work with other countries for sanctions similar to those in S. 2498? Also are you aware whether the Reagan administration has made any efforts on its own to persuade our allies to impose sanctions on South Africa?

Mr. HAUCK. Concerning the second part of your question, I'm not aware of any efforts of this administration to get our allies to impose sanctions on South Africa.

On the first part, those sections of S. 2498 that compel the President to do that would be very useful addition to any sanctions legislation.

Senator PROXMIRE. Say that again.

Mr. HAUCK. The first part of your question concerning that part of S. 2498 that has the President seek cooperation with our allies in sanctions, I think that's a useful addition to any sanctions legislation.

Senator PROXMIRE. You say that is a useful addition?

Mr. HAUCK. Yes, it is useful.

Senator PROXMIRE. I agree with you. I think it's quintessential. We're a very important trading partner with South Africa, a very important investor, but we are not the most important investors. I understand the United Kingdom is. Is that right?

Mr. HAUCK. Yes, Great Britain is the largest investor in South Africa.

Senator PROXMIRE. We are the most important trading partner, however.

Mr. HAUCK. We bounce back and forth between first and second place.

Senator PROXMIRE. At any rate, I agree with you whole-heartedly that if this is going to work we have to win the cooperation of other countries and we haven't had an effort. It would be one thing if the administration had tried hard and failed, but there's no indication that they've tried.

Now if anybody would be in a position to know, it seems to me with your background and qualifications—you're director of the South African Review Service of the Investor Responsibility Research Center. This indicates that the administration hasn't really tried to make sanctions work.

Mr. HAUCK. To the best of my knowledge, I know of none.

Senator PROXMIRE. They have not?

Mr. HAUCK. They have not.

Senator PROXMIRE. Gentlemen, I want to thank you very, very much.

For the record, if you would be willing to do so, I would appreciate it if you would respond to Senator Dodd's questions. Senator Dodd will give you questions in writing or his staff will and if you would respond to those for the record we would appreciate it.

The committee is adjourned.

[Whereupon, at 12:35 p.m., the hearing was adjourned.]

[Response to written questions of Senators Heinz and Dodd with additional material supplied for the record follow:]

RESPONSE TO WRITTEN QUESTIONS OF SENATOR HEINZ FROM VAN ECK

Q1. In your statement you say that the provisions of S.2498 would be "grossly damaging to the interests of [your] company and its shareholders". You seem to suggest that this cost would come from the inability of holders of stock in mining companies to trade easily their holdings. Do you have any estimates of just what that cost would be? Can you put a dollar value, at least a ball park estimate, on what the losses would be to U.S. citizens?

Answer to Q1:

Subsection (a)(1)(B), Section 2, of S.2498 would be "grossly damaging to the interests of our company and its shareholders" because it prohibits a United States person, "directly or through another person," from making "any investment in South Africa" which is defined in Subsection (a)(2)(A)(ii), Section 11 of the Act as the ownership of shares of a business enterprise. This would damage the interests of our company and the other 21 gold-oriented mutual funds (assuming they all own some South African gold mine shares) because it would prevent us from selling any new shares of our companies to private investors. New sales are the life-blood of the mutual fund industry. Without new sales, normal redemptions would eventually liquidate our enterprises.

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Individual investors require public market quotations and the ability to switch and improve their portfolios from time to time. Prohibiting Americans from making investments in South African gold mines means that all that existing shareholders could do would be to sell their shares. Due to the South African exchange controls, they can only do this at the financial rand rate of exchange ($.19) which is approximately a 50% discount from the commercial rand rate ($.39); so they already have unrealized losses of over $2 billion during the last year. To the extent that Americans could only sell and not buy and assuming that Europeans and Japanese would not buy these shares, the financial rand could conceivably decline to almost zero. In that case, U.S. citizens losses could amount to more than an additional $2 billion.

U.S. citizens owning a closed end investment company, such as ASA Ltd., with about $460 million in net assets and listed on the New York Stock Exchange, would also suffer additional losses if they could only sell and not buy.

In addition, the ten or more New York dealers who make markets and profits in these shares would have to cease operations under the proposed S.2498. This business would go to London or Zurich.

To sum up, my estimate of the capital losses to U.S. citizens of S. 2498 would exceed $3 billion, and the income loss would exceed $300 million. In my opinion, the proposed S. 2498 is much more an anti-American private investor Bill than it is anti-apartheid.

Q2. You indicate in your statement that the South African Government's imposition of exchange controls last September put an end to interest in new investment in South African mining interests. What you object to is any limitation on the ability of existing holders to trade in the interests that they already have. Would the problem you describe be solved if there were a ban on new investments in South Africa that did not prohibit trading in South African securities already held outside of South Africa.

Answer to Q2:

It would certainly help. My statement requests that any legislation which may be enacted contain no restrictions on the freedom of Americans to trade in the securities of South African Companies which are traded in over-the-counter markets in the United States as well as on national exchanges or otherwise publicly traded in other countries.

Most trading is among Americans and Europeans with each other. However, occasionally arbitrage transactions take place with Johannesburg. It is crucial to understand that a foreigner buying or selling shares in Johannesburg does so through the financial rand market. This, the second of South Africa's two-tier currency market, is not available to South Africans. The purchase of South African shares from South Africa does not contribute dollars to South Africa's reserves. The dollars paid for such a purchase are bought by other non-residents who sell the financial rands which are paid to the South African seller.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR [illegible]ODD FROM
VAN ECK

Q1. One of the greatest failures of the Administration's policy of constructive engagement is that it has led black South Africans to conclude that the United States does not support their struggle against apartheid and that it is on the side of the white minority government. Is it reasonable to expect that the United States can correct this perception if sanctions are not imposed against the Government of South Africa?

Answer to Q1:

Yes. I believe the facts will correct this perception if it really exists among the majority of blacks. I agree with President Reagan and Mrs. Thatcher that what we need is a deeper involvement by the Western business community in South Africa, not sanctions, as agents of change and progress and growth. Black South African public opinion is divided. In a public opinion poll published in The New York Times on August 3rd, 1986, more blacks were opposed to sanctions than were in favor.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR DODD FROM
DAVID P. HAUCK

Q1. Under the provisions of S.2498, U.S. companies would be allowed to reinvest profits generated in South Africa in their subsidiaries in South Africa. How would this exception to the general investment ban affect the operations of U.S. companies in South Africa?

A1. Most U.S. companies with operations in South Africa currently are not investing new capital in their South African subsidiaries. In general, the South African subsidiaries are capitalized by the reinvestment of profit earned in South Africa. Thus, under the provisions of S.2498, companies with operations in South Africa could continue to operate as they have been doing.

Q2. You testified that the trend in recent years is for U.S. companies to pull out of South Africa rather than to invest their for the first time. How does this compare to the activities of other Western firms vis-a-vis South Africa?

A2. IRRC has no information on the trend among other Western firms in their investments in South Africa. We currently are working on a directory of non-U.S. companies with investment in South Africa that we hope to publish some time in the first half of 1987.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR HEINZ FROM
W. CLARK McFADDEN II

Q1. We all like to believe that U.S. computer technology is more advanced than any other in the world, that we have a better product. In terms of what is available to South Africa, what capabilities do U.S. computer suppliers offer to South African buyers that cannot be obtained from non-U.S. suppliers should the South Africans be forced to look elsewhere?

To what extent are the South Africans already looking elsewhere?

A1. While there may be isolated exceptions, most U.S. computer systems operating in South Africa can be replaced with generally comparable foreign-made systems. This is particularly true for computer hardware in standard commercial configurations. Replacement of applications software is likely to be more difficult and time consuming, but it too can be effectively replaced.

The shift away from American computer products in South Africa has been apparent for several years. Recently, there has been a pronounced emphasis in South Africa on dual sourcing arrangements for U.S. computers. The share of U.S. computer sales in South Africa has been steadily declining. Finally, in the area of embargoed U.S. computer systems, U.S equipment appears to have been completely replaced by non-U.S. equipment.

Q2. I would like to draw your attention to the definition of computer under section 4(c) of S.2498. It states that a computer under the provisions of the ban would include "any computer that is the direct product of technology of United States origin." As I read that language, it seems to me to provide very wide extraterritorial effects, so that any computer made anywhere in the world, if it had any direct input of U.S. technology at all, would be banned under the provision. I have some familiarity with the effects of export controls, their spill-over effects. So the question comes to my mind, to what extent will such a broad extraterritorial reach encourage foreign computer manufacturers, and those who incorporate into their products U.S. components, such as computer chips -- to what extent will this provision encourage them to eliminate U.S. content in their products? This legislation is aimed at South Africa, but to what extent will it spill over to affect our exports to other parts of the world.

A2. CBEMA has long been concerned about the effects of U.S. foreign policy export controls on the perception of U.S. companies as unreliable suppliers. These foreign policy

restrictions have a cumulative effect far beyond each situation where they are triggered, such as South Africa.

U.S. foreign policy export controls on U.S. end products can be costly, especially when they are not imposed multilaterally. The effect of the controls is simply to force customers to the foreign competitors of U.S. suppliers. This direct cost, however, seldom extends beyond the country which is the object of the controls.

The indirect costs which affect the use of U.S. technology and components throughout the Free World, can be far more pernicious. When manufacturers throughout the Free World consider the use of U.S. components or technology in their products, they have come to realize that the U.S. components or technology can result in their products being subjected to U.S. export controls. This extraterritorial regulation is a substantial burden that accompanies only U.S. components and technology.

CBEMA believes this indirect or secondary effect of U.S. foreign policy export controls is substantial and growing. By applying sweeping definitions to U.S. technology and U.S.-origin, U.S. export control regulations have further magnified this extraterritorial impact of U.S. foreign policy controls.

Q3. South Africa is currently suffering from an acute shortage of adequately trained teachers. In fact, they do not even have enough teachers to train new teachers. In addition to democracy and civil liberties in South Africa, what we want is a country that can be a model of economic development and prosperity for the entire continent. Education is fundamental to that development. What role does computer technology play in making up for that shortage of teachers and in training new teachers?

A3. There is ample evidence to demonstrate that individual learning stations tied to computer network bases can be a highly effective tool in general education. These systems can deliver individual learning curricula to remote areas that have few educational resources. Moreover, they can greatly augment or compensate for teacher deficiencies.

In South Africa, U.S. computer systems have made a contribution to improving general education. For example, the "Plato System" has allowed mathematics and science programs to be presented in rural areas and in local languages. It has been particularly effective in enhancing the training of teachers for all segments of the population. At the elementary level, the "Writing to Read" program has been introduced in black schools to significantly augment the teaching of basic reading and writing skills in the English language.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR DODD FROM
W. CLARK McFADDEN II

Q1. What has been the impact of the prohibition in the President's September 1985 Executive Order on computer exports to the South African Government?

A1. The first impact of the prohibitions in the President's 1985 Executive Order has been to expand compliance and monitoring activities by U.S. computer companies operating in South Africa. Not only has this become a significant cost element for U.S. computer companies operating in South Africa, it has had a pervasive effect on customer relations. Virtually all purchasers of U.S. computer systems are keenly aware of U.S. export controls.

It has not been possible to quantify the effect of the Executive Order on sales of U.S. computer systems to South Africa. Prior to issuance of the Executive Order, U.S. companies had generally not been selling U.S. computer systems to the entities embargoed under the Executive Order. The Executive Order did serve, however, as a strong signal to all users of U.S. computer systems in South Africa that the reliability of U.S. suppliers was seriously at risk.

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

JUL 11 1986

Honorable Jake Garn
Chairman
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On July 12, 1985, the President signed the Export Administration Amendments Act of 1985, reauthorizing and amending the Export Administration Act of 1979 (the Act). Section 6(n) was added reinstating foreign policy controls on exports to South Africa which were in effect on February 28, 1982. Section 6(n) further stipulated that these controls would be in effect for one year from the date of enactment of the Export Administration Amendments Act of 1985, unless extended for an additional period.

Pursuant to section 6(f)(1) of the Act, I am informing you of the President's intent to extend existing foreign policy export controls on South Africa for the period July 13, 1986 through July 12, 1987.

Moreover, in accordance with section 6(f)(2) of the Act, I am submitting a full report on the extension of these controls specifying the purpose, effectiveness, and impact of the controls to be extended. Notification of the extension of these controls will be published in the Federal Register.

Sincerely,

Acting Secretary of Commerce

Enclosure

FOREIGN POLICY REPORT TO CONGRESS
EXPORT CONTROLS: SOUTH AFRICA
CONCLUSIONS ON CRITERIA & ALTERNATIVE MEANS

I. The Purpose of the Control: The United States controls the export of certain commodities to South Africa. The controls are focused on the South African government and homeland agencies that directly enforce apartheid, particularly the military and police. On July 12, 1985, the President signed the Export Administration Amendments Act of 1985, reauthorizing and amending the Export Administration Act of 1979 (the Act). Section 6(n) was added reinstating foreign policy controls on exports to South Africa which were in effect on February 28, 1982. Further, section 6(n) stipulated that these controls would be in effect for one year from the date of enactment of the Export Administration Amendments Act, unless extended for an additional period.

The purpose of this action is to demonstrate the continued opposition of the United States to the apartheid policies of the South African government, and in particular the actions of the military and police in South Africa in supporting that policy. The apparent unwillingness of the South African government to reform justifies retention of present controls. The Department of State recommends continuation of the foreign policy controls imposed on South Africa, including the embargo on exports to the South African military and police.

Failure to extend the controls at this time would be interpreted as diminishing U.S. opposition to the apartheid policies of the South African government and the severe repression caused by the exercise of far-reaching security powers by the South African government.

II. With respect to each of the criteria set forth in section 6(h) of the Act, the Secretary of Commerce has determined that

A. The controls are likely to achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods and technology subject such controls

Extension of the controls will continue the constant and firm demonstration of U.S. unwillingness to contribute to the South African policy of apartheid, and particularly U.S. unwillingness to supply through normal trade any items to those institutions that enforce apartheid and internal states of emergency, or which conduct destabilizing military action in neighboring countries.

The selective application of controls (to target the government entities enforcing racist policies) coupled with diplomatic efforts enables the U.S. to condemn the policies of the South African government while engaging diplomatic leverage to change the situation. A selective control policy also enables the U.S. to act against enforcers and instrumentalities of apartheid without directly damaging the South African economy.

The impact of unilateral U.S. foreign policy controls, however, is limited by the availability of comparable goods from alternate suppliers. Nevertheless, the existence of foreign availability does not undermine the control program in that its purpose is to demonstrate continued opposition to apartheid and other human rights repression in South Africa. Absence of these controls would lead to misapprehension about the seriousness and consistency of U.S. opposition to policies of the South African government.

The foreign policy purpose cannot be achieved through negotiations or other alternative means

This control program complements other U.S. government measures initiated to distance the United States from the racial segregationist policies of the South African government, including the Executive Order of September 9, 1985. In conjunction with the control policy, the Administration is engaged in diplomatic efforts seeking a nonviolent negotiating framework between the South African government and genuine representatives of the majority to agree on a new system of government based on the consent of the governed.

It is the policy of the United States to adopt measures that encourage the kind of peaceful, evolutionary change necessary for the long-term stability of South Africa. The United States continues to express its opposition to apartheid in public and international fora. Other specific measures that have been taken include restrictions on loans to South African government entities, and prohibitions on the import of Krugerrands. In light of the current situation in South Africa, these additional measures would not suffice to satisfy the foreign policy goals embodied by the export controls.

B. The controls are compatible with the foreign policy objectives of the United States and with overall United States policy toward South Africa

The export control policy toward South Africa is fully compatible with U.S. foreign policy of strong support for racial justice and internationally recognized human rights, and with U.S. opposition to apartheid and other human rights repression in South Africa in particular.

This control program is also consistent with the position of the United States that any sanctions must not be designed to damage the South African economy. Rather, the control program is an instrument used to express opposition to the practice of apartheid, and is thus targeted at the government entities enforcing racist policies.

C. The reaction of other countries to the extension of the controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or to be counterproductive to United States foreign policy interests

No negative reactions have been received from other countries that would render these controls ineffective in achieving their purposes. U.S. allies have frequently articulated their displeasure with the racial segregationist policies of the South African government. Therefore, extension of this control would not be inconsistent with worldwide, particularly allied, concern with the intolerable situation in South Africa.

The controls are fully compatible with U.S. opposition to the racial segregationist policies of the South African government and are targeted on specific elements of the South African government. This control program is not counterproductive to U.S. foreign policy interests.

D. The effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or on the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives

The controls raised the question of reliability of the United States as a supplier in South Africa. The competitiveness of U.S. suppliers for long term contracts has consequently been weakened.

Since the introduction of unilateral U.S. controls on exports to South Africa, the controls have had more pronounced effects on the export of electronic computers than on any other commodities. The controls have significantly reduced the export of U.S. computers to South Africa: sales declined 37% in 1985, down to $125 million from $198 million in 1984. Further, U.S. computer companies lost 5% of the South African market in 1985, down to a 30% market share. The U.S. computer industry enjoyed a 43% market share at the beginning of the 1980's. Cumulative five year losses total nearly $100 million.

Sales are down for U.S. industries doing business in South Africa. But more important than the immediate loss of individual sales as a result of the control is the psychological impact the control is having on future sales. Future sales are deterred because of the anticipation of further controls; the general uncertainty which shrouds the situation forestalls business transactions. Such is an illustration of the constraints limiting the assessment of the economic impact of the controls.

As a consequence of the controls, South African customers have sought other suppliers of comparable goods and technology. Other countries do maintain controls on certain products to South Africa, but the U.S. continues to maintain the most extensive control policy. As a result, U.S. firms have continued to lose sales to international competitors.

In spite of this, it has not been reported that the overall profitability of any particular firm and/or industry has been adversely affected by the control, and the South African market is not large enough to have a significant impact on the U.S. competitive position in the international economy. The foreign policy objectives of demonstrating continued opposition to the apartheid policies of the South African government, however, exceed the minimal short term trade losses.

E. The United States has the ability to enforce the control effectively

The Department of Commerce's Office of Export Enforcement (OEE) reports that, as directed by the Presidential Executive Order 12532, special emphasis has been placed on verification activities in South Africa. A major objective of the export enforcement program in South Africa is the prevention of diversion of exports to apartheid enforcing agencies.

This year, OEE has conducted more post shipment verifications (PSV's) in South Africa than in any other country. Recently, an OEE agent was sent to South Africa to conduct PSV's. He reported that none of the PSV's revealed any diversions to apartheid enforcing entities. OEE has also begun a program of requiring exporters of U.S.-origin computers to provide post-sale certifications to ensure that the U.S.-origin computers have not been diverted. It is still too early to judge the overall effectiveness of this program, but the preliminary results do not indicate that diversion has occurred.

Reexports to proscribed South African end users through third countries are somewhat more difficult to detect than direct exports from the United States; however, they are no more difficult to detect than reexports to other countries.

III. The nature and result of any alternative means attempted under section 6(e), or the reason for extending the controls without attempting any such alternative means

It has been determined that at this time, extending the control is an effective means of demonstrating U.S. displeasure with the racist policies of the South African government, and of distancing U.S. firms from furthering apartheid policies. Such a policy is being pursued simultaneously with continued U.S. policy of engagement with the South African government through diplomatic channels, and does not preclude the possibility of exploring and/or engaging alternatives.

Examples of measures which have been taken include restrictions on loans to South African government entities, prohibitions on the import of Krugerrands and military equipment, and a total arms embargo. The United States continues to express its opposition to apartheid in public and international fora.

IV. The availability from other countries of goods and technology covered by this control, and the nature and result of the efforts made pursuant to section 6(h) of the Act to secure the cooperation of foreign governments in controlling the foreign availability of comparable goods and technology

Given the fact there are such broad categories of goods and technology subject to the control, foreign sources clearly exist on many items. Notwithstanding the existence of foreign availability, the effectiveness of the control is not diminished in that the purpose of these controls is symbolic in nature by demonstrating U.S. continued opposition to the apartheid policies of the South African government, and in particular the actions of the military and police in South Africa in supporting that policy. The cessation of these controls by allowing them to lapse would signal a retreat from the constant and firm policy of the U.S. to distance itself from the South African policy of apartheid; therefore, the controls should remain in effect.

EXPORT CONTROLS FOR FOREIGN POLICY PURPOSES
EXTENDED FOR THE PERIOD JULY 13, 1986 THROUGH JULY 12, 1987
SOUTH AFRICA AND NAMIBIA

These controls are maintained in accordance with section 6 of the Export Administration Act of 1979, as amended. Those controls imposed pursuant to section 6(n) became effective July 12, 1985 on enactment of the Export Administration Amendments Act of 1985. All foreign policy controls imposed on South Africa are extended effective July 13, 1986 through July 12, 1987.

A. An embargo is in effect on:

1. commodities and related technical data controlled pursuant to the United Nations arms embargo of South Africa, i.e., arms, munitions, related materials and equipment, and materials and machinery for use in the production and maintenance of such equipment;

2. the export or reexport of any commodity, including G-DEST items, where the exporter knows or has reason to know that the commodity will be sold to or used by or for military or police entities or used to service equipment owned, controlled or used by or for such military or police entities;

   (Licenses may be issued on a case-by-case basis for exports of medicines, medical supplies and equipment, and items used to prevent acts of unlawful interference with international civil aviation, and related technical data.)

3. the export or reexport of technical data where the exporter knows or has reason to know that the data or any product thereof is for delivery to or for use by the military or police or for use in servicing equipment owned, controlled or used by or for those entities; and

   (Export of technical data that meet the conditions of General License GTDA are exempt from this prohibition.)

4. all U.S.-origin parts, components, materials and other commodities used abroad to manufacture foreign-made end-products where the exporter or reexporter knows or has reason to know that the commodity will be sold to or used by or for the military or police entities or used to service equipment owned, controlled or used by or for such military or police entities (the same exceptions

for medicines and unlawful interference with civil aviation apply).

B. A validated export license is required for foreign policy reasons for the export to South Africa and Namibia of:

1. aircraft and helicopters;

2. computers destined to all government consignees; and

3. any instrument or equipment particularly useful in crime control and detection.

C. Applications for validated export licenses will:

1. generally be considered favorably on a case-by-case basis for aircraft or helicopters for which adequate written assurances have been obtained that the aircraft or helicopters will not be put to military, paramilitary, or police use;

2. generally be denied if the export of computers or goods to service computers is likely to be used by or for apartheid enforcing entities; and

3. be denied for crime control and detection equipment pursuant to the policy stated in section 376.14 of the Export Administration Regulations. (General foreign policy controls implemented for these items were extended for one year on January 20, 1986.)

Addendum

SACP directive/discussion document

The Politburo of the South African Communist Party (SACP) is currently (May 1986) circulating a directive/discussion document on negotiations to its members in order to promote uniformity on this issue throughout their ranks and to foster a similar approach within the ranks of the ANC. The document originated from an extended Politburo meeting with members of the Central Committee in March 1986 where a decision was taken to provide more systematic theoretical guidelines on certain vital questions/problems which have been highlighted by the current situation in South Africa:

1. It is universally acknowledged that our situation is pregnant with the prospects for change. The use of brute force, combined with attempts at reformist diversions designed to avoid real change, are visibly failing. The resistance is not being subdued. Instead, more and more people are being awakened to political life.

2. The political statement circulated by the Central Committee after our last plenary session touches on these developments in greater detail and forms part of the background to this discussion document.

3. Our liberation front is becoming increasingly accepted as more than an agitational opposition; it is regarded by a large scale of the world and, more importantly, by the majority of our people, as the immediate alternative power to racism and exploitation. The heightened tempo of the conflict and the prospects which are emerging for radical transformation demand continuous attention to our organisational, agitational and mobilising tasks both in the military and political spheres as part of the unfolding revolutionary process. These developments also require reflection on a number of problems relating to the strategy and tactics of the revolutionary transformation which may previously have been in the realm of speculative debate but which have now assumed an immediate significance.

4. Party cadres at different levels of the liberation structures have of course participated in the process of elaborating answers to questions which changing reality is increasingly posing. It has obviously become more urgent than ever for the Party **as a collective** to reflect more deeply than it has managed to do in the recent period on some of the problems raised by the changing situation.

5.1 The strategic objectives defined in our programme, Party constitution and other basic documents remain valid. These documents define the main content of our national democratic revolution and describe it as a stage towards the struggle for social emancipation in the epoch of the world transition from capitalism to socialsm and within the context of the struggle against imperialsm. The dominant role of the working class at this stage of the struggle is stressed.

5.2 The Freedom Charter provides broad popular guidelines which describe the main content of the people's power in the immediate aftermath of a victory of the national democratic revolution. It is not a programme for a socialist South Africa but, depending upon the social forces which come to power, it can become the starting point for creating conditions which would lead to a socialist transformation.

5.3 Our broad strategy for achieving people's power is to mobilise the masses for a seizure of power through a combination of political action and armed struggle in which partial and general uprisings will play a vital role in the developing stages of the People's War.

6. Paragraph 5 very briefly summarises and describes the main beacons of our struggle. But the tactical journey towards these beacons must be influenced by the continuously changing and developing situation. And, as we have already emphasised, events of the last twenty months have resulted in a **very significant** transformation of the balance of class and national forces involved in our struggle.

7. There has already been an immeasurable strengthening of the revolutionary forces. Organisationally, this expresses itself primarily in the enormous growth in the popularity, reputation and status of the ANC-led liberation alliance. This alliance attracts varying degrees of allegiance and support from the masses organised at local, regional and national level and from the organised working class. Roughly speaking, this sector as a whole encompasses the content of the **main revolutionary forces** as organised contingents. In class terms the core of those contingents are the urban and rural working people in alliance with other classes and strata among the nationally oppressed majority such as the Black petty bourgeoisie whose objective interests will be served by the revolutionary transformations envisaged by the liberation alliance.

8. In addition the struggle in our country is creating a situation in which the white power bloc is beginning to lose its

cohesion. Sections of the ruling class in the imperialist countries, which were previously quite ready to underpin the apartheid system, are also beginning to lose faith in its capacity to protect their interests. Sensing the inevitability of change, important sectors of the white power bloc and some imperialist strata are themselves beginning to seek a transformation involving mainly the extention of varying forms of political democracy within the framework of capitalism. Recognition by powerful segments of our ruling class (and some of their imperialist allies) that they can no longer continue ruling in the old way obviously favours the revolutionary forces; it brings to the fore the need to intensify the politico deplomatic terrain of struggle so as to weaken still further the cohesion of the forces ranged against us.

9. Thus, there are emerging in South Africa what Lenin called (in relation to the February 1917 Russian Revolution) "dissimilar currents, heterogenous class interests, contrary political and social stirrings", as objective factors in deepening the enemy crisis, fragmenting its previously monolithic character and therefore objectively strengthening the prospects of a radical breakthrough. On the face of it there appears to be a proliferation of new groupings which consider themselves to be part of the **forces for change** but which cannot necessarily be embraced as part of what we regard as the **revolutionary forces**. By far the most important class grouping which falls into this category is what one might call (for want of the better phrase) the "liberal" bourgeoisie. It is the representatives of the latter and their like-minded imperialist friends which triggered off the current series of talks and dialogue with the ANC. Many issues going to the very root of the politics and economics of an immediate transformation have been a subject of discussion with these forces and of continuous speculation in the international and South African media.

10. Let us be clear. The "liberal" bourgeoisie seek transformations of the South Arican society which go beyond the reform limits of the present regime but which aim to preempt the objectives of the revolutionary forces. Old style apartheid no longer serves their class interests. In addition, external pressures triggered off by an unending people's resistance, are taking a terrible toll of their existing and potential economic interests. It is clear that the newly found political liberalism of a significant section of the bourgeoisie (represented by the signatories to the FCI Business Charter) has, as its primary objective, the saving of capital-

ism implying, by and large, the retention by them of the ownership of all or most of the means of production. Their Business Charter, which in certain respects proclaims the same liberties as the Freedom Charter, understandably incorporates clauses such as "everyone has the right to own property, alone as well as in association with others . . . and everyone has the right freely to employ labour and to own or manage a business in accordance with the rights and principles set out in this Charter". And, (as we shall see later) the other side of the same coin is the fear of a revolutionary takeover and, therefore, an attempt to avoid majority rule in its true meaning.

11. In other words, the liberal bourgeoisie seek a February but, understandably, in a way which would prevent it from moving into an October. Their strategy for achieving this objective has been clearly articulated by them.

11.1 They seek transformation through negotiation and not the kind of conflict which would culminate in a revolutionary seizure of power. Lenin said of the Russian liberal bourgeoisie that it "does not demand the overthrow of the Tsarist government . . . it is striving to effect as peaceful a deal as possible between the Tsar and the revolutionary people . . . a deal which would give a maximum of power to itself, the bourgeoisie, and a minimum to the revolutionary people . . . the proletariat and the peasantry".

11.2 To implement this tactic they, together with their external allies, can be expected to attempt to push the revolutionary forces into negotiation before they are strong enough to impose their basic objectives. The intention is to defuse the people's struggles and to force a compromise based on existing power relationships.

11.3 A vital element of their strategy is to prevent effective majority rule so as to keep the national forces divided. For example Gavin Relly, one of the most influential signatories to the Business Charter, casts doubts on the advisability of having a single directly elected Assembly, supports the perpetuation of tribal power centres such as the homelands and states that "an immediate handing over of power on the basis of one man one vote would result in political chaos and economic retreat".

11.4 Consistent with the above is the insistence by the Rellys and the Van Zyl Slabberts that there must be a break by the ANC with the Communist Party and that in any case the ANC must be regarded as only one of the many organisations among the black forces when it comes to a round

table settlement discussion. Van Zyl Slabbert's report-back to Botha about his discussions with the ANC reveals another level of his approach. He described the ANC following among the people as a "myth" and asked for permission to see Barnard (the head of National Intelligence) in order to discuss proposals (with security implications) which he felt could "draw the teeth" of the ANC!

12. We have devoted space to the problem of the liberal bourgeoisie because it helps to highlight with greater clarity a number of questions related to the character of our revolution. More particularly:

12.1 Our situation differs from the situation facing the Russian Bolsheviks in 1905 and in the period prior to February 1917. In our case the white bourgeoisie (including its political liberal segment) is in power: it is the ruling class. Therefore we must resist any confusion between the national democratic revolution (whose content is spelt out in our programme, in the ANC strategy and tactics, etc) and the classical constituents of bourgeois democratic revolutions. The unique and atypical form which South African capitalism has developed (based on colonialism of a special type) has placed on the agenda a struggle for national and political demands which are usually associated with the historic struggle waged by the bourgeoisie at the dawn of capitalism against feudalism. These demands have become known as bourgeois democratic rights.

12.2 In any case (in contrast to 1905 and February 1917) no sector of our bourgeoisie (with the exception of the tiny weak black bourgeoisie) supports the struggle for bourgeois democratic rights in their true meaning. As we have seen they remain opposed to the very starting point of bourgeois democratic rights, i e majority rule, one man one vote in a united national state. Despite a great deal of rhetoric on questions of democracy their ultimate solutions are always qualified by references to group rights which, in the South African context, implies various forms of protection of the accumulated privileges of the white group.

13. Our characterisation thus far of the liberal bourgeoisie does not however dispose of the question completely. A serious revolutionary movement always tries to divide the enemy and to broaden the base of opposition to the main enemy. This implies the need for ever-widening varieties of opposition some of which may not be motivated by revolutionary intentions. In this connection we must also bear in mind the danger of the potential growth in the strength of out-and-out nazi forces such as AWB, HNP, Treurnicht's CP

(and their vigilante offshoots) and the possibility of an undisguised military dictatorship. Also we must not underestimate the counter revolutionary offensive against freedom movements orchestrated by the Reagan administration. On the other hand a political re-adjustment in the ruling power block which favours its liberal bourgeoisie wing would undoubtedly create better objective conditions for the continuing struggle by the revolutionary forces to achieve the aims of the national democratic revolution. Tactically, what flows from this?

13.1 On the one hand we are justified in helping by all means (including talks) to advance the process of breaking the cohesion and unity of the ruling class and to isolate and weaken its most racist and politically reactionary sector.

13.2 On the other hand, without blurring some very important distinctions between liberal bourgeoisie and their more reactionary class brothers,

13.2.1 We must expose their objective of co-opting forces from among the oppressed in order to frustrate the achievements of the main aims of the national democratic revolution.

13.2.2 We must not play into their hands by working out compromises (or being seen to work out compromises) for some hypothetical negotiating table which constitute a retreat from the main aims of the national democratic revolution. Nor must a genuine desire to project a public image of "reasonableness", tempt us to paddle softly on the true nature of the liberation alliance and its revolutionary socio-economic objectives.

13.2.3 At the same time we must not mechanically dig in our heels against any future possibility of negotiation or compromise with other forces. We must remember that virtually all revolutionary struggles in the post war period (Algeria, Vietnam, Angola, Mozambique, etc) reached their final climax at the negotiating table. But the question of negotiation usually arises at a time of a major revolutionary climax involving the transfer of power based on the massive strength of the people's offensive. At such a stage we have to judge what interim compromises are historically justified and take the people with us. **The main thrust of our present strategy remains a revolutionary seizure of power.** Premature speculation about possible compromises in order to tempt broader forces such as the liberal bourgeoisie on to our side, may serve to blunt the edge of the people's revolutionary militancy.

14. Another question which requires special attention is how to harmonise and achieve a correct balance between the imperatives of class alliances and the independent role of the working class and its political vanguard. In the area of mass organisation the answer is less problematic. The emergence of a strong trade union movement which is both independent of and part of the broad alliance of revolutionary forces creates a workers' constituency with enormous potential for acting at the mass level in defence of workers' interests both economically and politically. The trade union movement does not and cannot carry out the functions of the political vanguard of the working class. This is the role of the Party of the working class, which we are. In the alliance headed by the ANC we represent both the short and long term political and social aspirations of the working class. We have always believed that our Party can only carry out its historic mission by ensuring that its vital role in the alliance **does not result in a negation of its role as a public independent vanguard of the working class.** In this connection we must consider the following:

14.1 We continue to face the old problem of party work always being pushed into second place because of the necessary involvement of virtually all our talented personnel in other structures of the liberation alliance. This continues to limit our capacity for the independent spread of working class perspectives in the struggle and hinders the strengthening of the Party organisationally. If no effective steps are taken to deal with this weakness, the Party will not be able to carry out its historic mission.

14.2 It is also necessary to reflect on the profile of the Party in the liberation alliance whose public head is correctly the ANC. The question which needs to be addressed is: to what extent has it become accepted as a permanent feature of the alliance that the Party is not a participant **as a Party** in the activities and relations of the alliance with other forces? This question recently came under consideration in the preparations for the meeting with COSATU. After prior discussion which included an informal canvassing of the views of some of the COSATU delegation it was decided that the Party should not be seen to be having an independent presence in the talks. Without questioning the correctness of the decision on this specific occasion it has become important to open up this problem for reflection and discussion especially in relation to the status and role of the Party in our future serious negotiating processes. It is also necessary to reflect on the extent to which the Party should

(like SACTU) develop publicly-expressed independent relationships with selected working class groupings.

14.3 Making the formal profile of the Party more visible will not, on its own, give it the capacity to perform its historic mission. In the end, it is the Party's strength on the ground and more especially, its organised presence among the black working class, which counts.

15. The situation has shot into greater prominence than ever before the question of the character of the interim phase of people's power. We have partly touched upon this in reference to the role and objectives of the liberal bourgeoisie. The series of talks on which the alliance has correctly embarked, demand from us more precise formulations than are contained in the broadly stated objectives of the Freedom Charter. Understandably, there is increasing pressure for answers to questions which relate to the interim phase of people's power. It has clearly become necessary to elaborate more detailed approaches to matters such as the relationship between private and public property in the interim phase. These approaches must be guided by the following general considerations:

15.1 On the one hand, as clearly spelt out in our programatic documents, the **immediate** attainment of the socialist revolution is not on the agenda. This does not mean that we are putting it off but, to quote Lenin's words, we "are taking the first step towards it in the only possible way, along the only correct path, namely the path of a democratic republic".

15.2 On the other hand, liberation implies a massive redistribution of wealth and cannot have much meaning without the undermining of the economic hold over the means of production which is exercised by the existing ruling class and without (at a political level) creating a state form in which the working people are dominant. This implies more than an alteration in voting arrangements. Meaningful excercise of people's power during the interim phase is inconceivable in a situation in which the army, the police force, the state bureaucracy, the communication media etc etc remain substantially in control of the existing structures. It is only a provisional people's government which can take measures which will ensure the possibilities of a real exercise of democracy.

16. In conclusion it is necessary to stress that the talks which have taken place have undoubtedly served to enhance the unity of the democratic forces and to weaken the cohesion

of the enemy both at home and abroad. Indeed this area of the politico-military terrain of struggle needs to be pursued with even greater vigour. We must however make sure that the whole membership of the liberation movement and the people generally are kept fully informed about the nature of the talks so as to avoid misunderstanding and distortion of their real nature.

The emphasis of the struggle rests on the rising momentum of the people's offensive which must be intensified with the object of wining people's power. The issue of future negotiations (to be distinguished from the talks) must always be dealt with in a manner which will not serve to divert or defuse this momentum. We must continue to make clear that our "bottom line" for negotiation is the transfer of political power to the majority in one united democratic South Africa.

This objective should however not divert us from creating the broadest possible front of struggle around immediate basic demands such as the release of political prisoners, troops out of townships, dismantling apartheid, legalising the ANC and so on. The winning of these demands may create a better climate for negotiations but cannot in itself be regarded as a bargaining chip for slowing down or suspending the people's offensive.

The Pace of Reform--1976 to 1986

1976

Sports and athletic competition desegregated.

****

Education reforms instituted.

1977

Job reservation partially scrapped.

1978

99-year leasehold home ownership for blacks.

1979

Black trade unions recognized.

****

Black unions given the right to strike and bargain collectively.

1980

Leading hotels, restaurants, libraries, and sporting facilities are desegregated.

****

Government doubles annual expenditure on black housing.

1981

Permanence of blacks in white areas is accepted.

****

Racial wage differentiation to be abolished in public sector.

****

Compulsory education for black children initiated.

****

Racially mixed President's Council begins discussion on South Africa's constitutional future.

****

Trade unions opened to all races.

1982

President's Council admits urgent need for political reform.

****

Black self-government instituted at local levels.

****

National Party splits as 18 Conservative M.P.'s break away in protest against reform measures.

****

Blacks join Government and quasi-Government boards--i.e. Housing Commission, The Prime Minister's Economic Advisory Council.

1983

Referendum on new Constitution: Two-thirds vote admits Coloureds and Indians to Parliament.

****

Government admits homeland policy is a failure.

****

Legalized employment discrimination eliminated.

****

Blacks exercise vote in local elections.

****

Job reservation scrapped.

1984

New Constitution abolishes whites-only Parliament.

****

Government promises parity in education.

****

Abolition of restrictions on blacks in the Western Cape.

1985

Immorality Act scrapped.

****

Mixed marriages allowed.

****

Forced removals abolished.

****

Political parties opened to all races.

****

Freehold land ownership rights for urban blacks extended.

****

Central business districts opened to businessmen of all races.

****

One citizenship for all South Africans promised.

****

Reincorporation of homelands in united South Africa declared negotiable.

****

Coloured and Indian Cabinet Ministers appointed.

****

Public service to be staffed according to merit.

****

1985(cont.)

Commitment to power sharing with blacks.

****

Natal Province leaders meet to discuss multiracial government.

****

Amnesty offered to Nelson Mandela on condition that he renounce violence.

****

Right to own land granted to South Africans of all races.

****

Negotiations with black leaders promised.

****

All Universities desegregated.

****

Repeal of all references to race and color in immigartion laws.

****

75% of all whites in nationwide poll would accept some form of power sharing with blacks.

1986

Pass laws abolished.

****

Influx control and 34 related laws amended or scrapped.

****

Abolition of all-white Provincial Councils.

****

Formation of multiracial Regional Services Councils.

****

Separate Amenities Act repealed.

****

Government expenditures on black education up 700% since 1979.

****

Legislation introduced to enable homeland blacks to regain South African citizenship.

****

Blacks, Coloureds and Indians become members of Executive Councils in previously all-white provincial governments.

****

National Statutory Council instituted to begin discussions with blacks on a new Constitution.

JW

TUFTS UNIVERSITY

Jean Mayer
President

1986 JUN 27 PM 8:32

June 24, 1986

The Honorable Jake Garn
505 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Garn:

I am writing to you on the subject of South Africa. As one of the university presidents who have been invited to come to the White House for a meeting on South Africa on Monday, June 30, under the chairmanship of the Vice President, I would like to express the hope, in advance of the meeting, that we will either be told by the administration that it is preparing to announce more drastic and visible steps on South Africa, or that this meeting is part of a process leading to it. A briefing by itself would be inadequate.

All of us, I believe, are reasonably well posted on what goes on in South Africa, not only because it is reported in detail in the press, but because all of us have had our own means of information. For example, at Tufts, the chairman of the Trustee Investment Committee spent several weeks in South Africa. I have sent the chairman of our Department of Pediatrics to look into the medical situation in South Africa and what we could do to be helpful to black physicians. Also, as President of Tufts and as Chairman of the New England Board of Higher Education, I started a system of scholarships for nonwhite students in hitherto largely white universities in South Africa. I have been in very close contact with university presidents there and with socially active persons such as Bishop Tutu and Chief Buthelezi. The close contacts between our university and other universities in South Africa will continue this summer through planned visits.

None of the "constructive" steps such as the scholarships are seen by undergraduates as addressing the position of the United States vis-a-vis the racist measures in South Africa. Because American students feel that the National Administration is not speaking with a loud enough voice on the topic, universities end up being caught in the middle as students express their dissatisfaction with our national position. We have demonstrations, sit-ins, and vigils, and my colleagues and I end up spending a

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disproportionate amount of time on this problem. Worse, we see the same type of wedge being driven between the government of the United States and the young which universities suffered from during the Vietnam period.

It does very little good to explain that immediate divestment may not be the appropriate response to the problem of South Africa or may even, in some respects, be counterproductive. It is something the universities can do while the National Administration is seen as not doing enough. Like the bombing of Libya, it may make Americans feel better even though it may not be the perfect answer to a very complex situation. The fact that economic sanctions are applied to Nicaragua, Libya, Cuba, and a number of other countries, also hurts the argument that divestment or disinvestment may not be the right answer for South Africa.

Because of all these considerations, I am therefore addressing again the plea to you as a Member of Congress as well as to the Administration that Washington come up with a clear signal, not unlike the vote in the House of Representatives, which will not only put the South African government under unmistakable notice that they are expected to negotiate power sharing with black leaders, but will also reassure young Americans that their government represents them.

Sincerely yours,

Jean Mayen
President
Tufts University

ANPA
TO ADVANCE THE CAUSE OF A FREE PRESS

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Jerry W. Friedheim
Executive Vice President

July 10, 1986

Hon. John Heinz, Chairman
Subcommittee on International Finance
and Monetary Policy
Committee on Banking, Housing and
Urban Affairs
SD-534 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As you and your subcommittee members consider anti-apartheid legislation July 15, we ask that you do nothing which might have the affect of making it more difficult for the press to gather news in South Africa and for news to be distributed there.

We note, for example, that S 2498 prohibits deposits in South African banks [Sec. 2 (a)(1)(D)], while any U.S. citizen assigned as a foreign correspondent in that country would find it most difficult to function on a permanent basis using only travelers checks.

The American Newspaper Publishers Association represents some 1380 member newspapers which account for more than 90 percent of U.S. daily and Sunday newspaper circulation. Our members have correspondents working in South Africa and subscribe to news services having such correspondents. We are concerned with the South African restrictions on news reporting and would not want our government to complicate the very difficult situation of news gathering there.

I'm sure that neither you nor your committee, nor any of the sponsors of S 2498 wish to do that, so we call this matter to your attention. ANPA has no formal position on the merits of the legislation before the committee, though our sympathies lie with journalists and others in South Africa who are suffering denial of basic human rights.

We ask that your committee work with the bill sponsors either to exempt news gathering and distribution from legislative provisions, or otherwise to assure there is no unintended burden placed by whatever legislation, if any, emerges from your subcommittee on South African news gathering and distribution. ANPA's government affairs staff will be pleased to details of bill language with your staff if you find that helpful.

Sincerely,

Jerry W. Friedheim

Jerry W. Friedheim

cc: Wayne Abernathy